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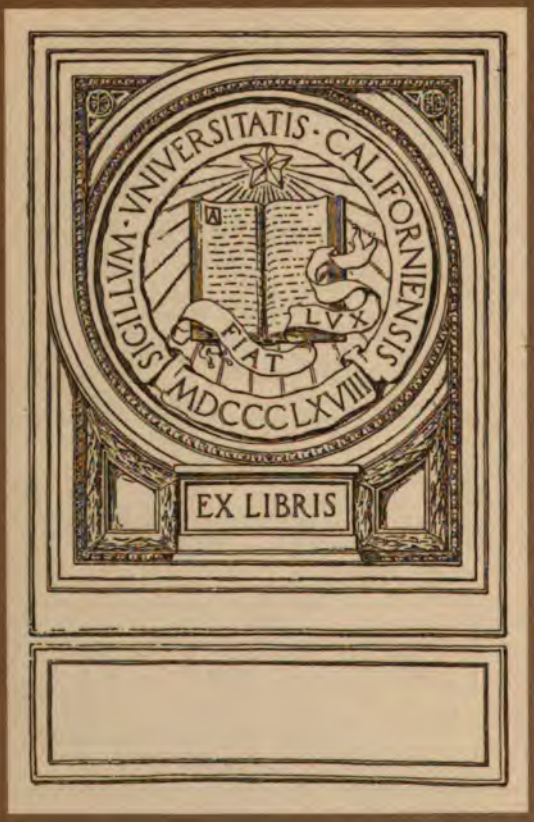
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THE NEW COMPETITION

"Competition Is War, and 'War Is Hell'"

THE NEW COMPETITION

AN EXAMINATION OF THE CONDITIONS UNDERLYING THE RADICAL CHANGE THAT IS TAKING PLACE IN THE COMMERCIAL AND INDUSTRIAL WORLD—THE CHANGE FROM A *COMPETITIVE TO A COÖPERATIVE BASIS*

BY

ARTHUR JEROME EDDY

AUTHOR OF "THE LAW OF COMBINATIONS," ETC.

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FOREWORD

THIS book deals, first of all, with *what is now going on*—with *Facts;* secondly, with the *Principles* underlying actual conditions; thirdly, with *Tendencies* so far as they can be inferred from close and impartial consideration of facts and principles.

No attempt is made to fit facts to a preconceived theory, or stretch any stubbornly held theory to cover unrelated facts. Such notions as the writer holds have been slowly developed during years of intimate contact with many forms of coöperation, and the best evidence to himself that he has been open-minded in his observations is that nearly all his early ideas regarding competition and coöperation have been forced to yield to the pressure of realities.

The reader will also be interested to know that many of the suggestions—even to the most radical—have been tested in practice.

In so far as the book has any merit whatsoever it is of as much value to the laborer as to the employer, to the country mechanic and merchant as to the large corporation and trust.

Certain chapters—"The New Competition," "The Open-Price Association," "Brutal Competition," and "The Trust Problem, Segregation *vs.* Disintegration"—appeared in condensed form in *The World's Work.*

Arthur Shadd

268188

CONTENTS

CHAPTER		PAGE
I.	The Old Order Changeth	1
II.	What Is Competition?	12
III.	Competition Is War, and "War Is Hell"	19
IV.	Growth of Coöperation	38
V.	Brutal Competition	59
VI.	True vs. False Competition	80
VII.	The Old Competition	92
VIII.	The New Competition	100
IX.	The Open-price Policy	110
X.	Open-price Association	118
XI.	Harmony	146
XII.	Relations with Customers	179
XIII.	Relations with Sellers	192
XIV.	Relations with the Public	214
XV.	Vanishing Industries	221
XVI.	What Is a Fair Price	232
XVII.	The Trust Problem—Segregation vs. Disintegration	257
XVIII.	The Labor Problem—Integration vs. Aggregation	279
XIX.	Class Legislation and Discrimination	305
XX.	Constructive Legislation	333
Appendix I.	Conditions in Canada	345
Appendix II.	Conditions in England	349
Appendix III.	Conditions in Germany	354
Index		361

THE NEW COMPETITION

CHAPTER I

THE OLD ORDER CHANGETH

I

"Competition is the life of trade."

"Competition is the death of trade."

One proposition is as true as the other according to the point of view of him who utters it.

To the man who has downed his competitor competition is the life of trade; to the competitor who is downed competition is death.

Again, to the purchaser who buys bargains from merchants who in their jealous rivalry sell below cost, competition is the life of trade; to the merchants, one or more of whom must go to the wall, competition is fatal.

To the public who buy for cost or less than cost when rivalry is fierce, competition may seem a good thing, but when the rivalry results in disaster, and later prices go up to a point sufficient to make good the losses of the survivors, with a profit added, competition is wasteful and costly.

Nothing is more certain than that the community, the country as a whole, bears all the cost and all the losses of wasteful competition; whether it reaps the profits is another question.

The profits may be spent elsewhere, the losses—the waste of time, of energy, of money, in unsuccessful efforts to get trade, to establish a business, to build up an industry—cannot be shifted, they lodge at home, are borne in the long run by the entire community, and covered in the long run in the prices of products.

So that to the community competition, so far from being the life of trade, may be the reverse.

II

Competition, blind, vicious, unreasoning, may stimulate trade to abnormal activity, but such a condition is no more sound, healthy "life" than is the abnormal activity of the man who has taken a little too much alcohol—one stimulant is like another, exhausting in the end.

Competition is a fetish that men ignorantly worship, but the cult has had its day, the sanctity of the god is being assailed, the people are waking up and asking:

"What is this competition and why should it be hedged about and preserved?"

The country merchant asks himself: "Why is it a good thing for me to undersell the man across the way and try to drive him out of business? Why is it a good thing for him to undersell me and try to drive me out of business?"

If either succeeds, will not a stranger take the loser's place?

The country mechanic asks himself: "Why should I work for less than others in the foolish effort to starve them out of the village? Why should they try to take the bread from my mouth by working for less than I must have to support my family? What gain is there in that sort of competition?"

The labor union says to its members: "You shall not

compete one against another by offering to work for lower wages or longer hours, that sort of competition is dead."

The tendency with the unions is to go a step further and say: "You shall not even compete in the amount of work you do per day, but each man shall do so much and no more." A crude solution of a pressing problem; a very curt answer to the proposition, "Competition is the life of trade."

III

The Socialist would eliminate competition altogether, a cardinal principle of his philosophy being that it is not only wasteful but inherently wrong, and the Socialist must be reckoned with. He is abroad in the land, he is making himself felt at the polls, he is winning and holding offices, he is causing the leaders of the older parties no little anxiety. Why? Because the people are becoming Socialists?

Not at all.

Socialism as Socialism probably has little if any greater appeal to-day than it had a generation ago. It will always have its ardent followers, but in its more logical form it is too abstract a theory to be understood and attract generally. Its practical suggestions are absorbed by older political organizations, with the result that the Socialist party is ever a band of enthusiasts "crying loudly in the wilderness."

The strength of Socialism at the moment lies in the fact that some of its demands coincide with the tendencies of the hour. Say, if you please, the world has caught up with Socialism in certain directions, and propositions that seemed revolutionary twenty-five years ago—yes, ten years ago—are now debated as reasonable, are even turned into laws.

More or less unconsciously the labor movement has

traveled converging lines with Socialism. Each repudiates the other, yet both have much in common, and of late the sympathetic ties are being recognized.

Without quite knowing it they are in complete accord on the fundamental proposition that competition, as heretofore understood and practiced, is an evil to be suppressed.

What partially blinds Labor Unionism to the viciousness of competition is the so-called "conflict between Capital and Labor." This supposed conflict leads labor to encourage "cut-throat" competition where capital and profits are concerned, while decrying it where labor and wages are involved—an illogical position.

Some Socialists in their hatred of capitalism uphold laws—such as the anti-trust laws—that are supposed to promote competition, quite overlooking the obvious truth that such legislation is contrary to all the tenets of Socialism, being the over-ripe fruit of individualism. In the main the more philosophical Socialist writers look upon the "trust" as the final stage of "Capitalism," the forerunner of the Socialistic community.

For our present purpose it is sufficient to point out that two very large factors in modern Society are opposed in theory and practice to competition as commonly understood. Unionism will have none of it in the world of labor. Socialism would have none of it in the world at all.

When to the opposition of these two factors is added the opposition of Capitalists, Society would seem to be pretty nearly a unit to the effect that competition is not the good thing it is said to be.

IV

In Europe as well as America there is a ferment of new ideas, of protest, of doubt, of discontent regarding

this matter of competition. The old ideas do not seem so sound, they do not ring so true as they once did; they do not fit present conditions, there is something wrong.

As a matter of fact, they never were true, they never were more than superficially sound.

Competition was the life of trade only when trade was piratic, merciless. Competition, good, old-fashioned "cut-throat" competition, belongs to trade's buccaneering days when every industry flew the black flag and the appearance of a competitor meant war to the knife.

Conditions have changed, men no longer look upon one another as industrial and commercial brigands. We are far from an era of universal good feeling, of mutual confidence, of generous and hearty coöperation, but the world is working that way.

Steam and electricity have brought countries, cities, individuals, so close together the old feeling of bitter antagonism is softened. The real competitor of the country merchant is not the fellow on the opposite corner, but the mail-order store a thousand miles away. The real competitor of the mine-worker in Pennsylvania is not the man in the next shaft, but the immigrant boarding the steamer at Naples. The only competition the laborer in California fears is from the Orient.

Within a hundred years the world has narrowed to a very small area. Distance has been well-nigh annihilated; men, once far apart and strangers, are now near neighbors; in close contact they speak to one another with ease.

The competition of isolation is no longer possible, it never was profitable, it has become disastrous; yet a very respectable section of the body politic—louder than all, the politicians—cry out for it; they would stem the tide of progress and restore the obsolete.

It is all futile. The old competition is passing beyond recall. The new is coming, coming as surely as the con-

quest of the air is coming, coming as surely as other and greater inventions and discoveries are coming to weld men closer together. All the King's horses and all the King's men cannot put competition back again. It is fallen, cracked, and forever spilled.

V

In a recent case in the Supreme Court of the United States a Justice, distinguished for his philosophical insight and literary expression, said:

"I think that we greatly exaggerate the value and importance to the public of competition in the production or distribution of an article, as fixing a fair price. What really fixes that is the competition of conflicting desires. We, none of us, can have as much as we want of all the things that we want. Therefore, we have to choose. As soon as the price of something that we want goes above the point at which we are willing to give up other things to have that, we cease to buy it and buy something else. Of course, I am speaking of things that we can get along without." [1]

Other courts have said:

"Excessive competition may sometimes result in actual injury to the public, and competitive contracts, to avert personal ruin, may be perfectly reasonable. It is only when such contracts are publicly oppressive that they become unreasonable and are condemned as against public policy." [2]

"While, without doubt, contracts which have a direct tendency to prevent a healthy competition are detrimental to the public, and consequently against public policy, it is equally free from doubt that when such contracts prevent an unhealthy competition and yet furnish the public with adequate facilities at fixed and reasonable rates, they are

[1] Dissenting opinion of Justice Holmes, in Dr. Miles Medical Co. *vs.* Park & Sons Co., 220 U. S. p. 373.

[2] People *vs.* North River Sugar Refining Company, 54 Hun. 354, and N. Y. S. 406.

beneficial and in accord with sound principles of public policy. For the lessons of experience, as well as the deduction of reason, amply demonstrate the public interest is not subserved by competition which reduces the rate of transportation below the standard of fair compensation." [1]

"I think it would be unsafe to adopt as a rule of law every maxim which is current in the counting room. It was said some three hundred years ago that trade and traffic were the life of every commonwealth, especially of an island. [2] If it be true also that competition is the life of trade, it may follow such premises that he who relaxes competition commits an act injurious to trade; and not only so, but he commits an overt act of treason against the commonwealth. But I apprehend that it is not true that competition is the life of trade. On the contrary, that maxim is the least reliable of the host that may be picked up in every market place. It is, in fact, a shibboleth of mere gambling speculation, and is hardly entitled to take rank as an axiom in the jurisprudence of this country. I believe universal observation will attest that for the last quarter of a century competition in trade has caused more individual distress, if not more public injury, than the want of competition. Indeed, by reducing prices below or raising them above values (as the nature of the trade prompted), competition has done more to monopolize trade, or to secure exclusive advantages in it, than has been done by contract." [3]

It is interesting to find such expressions regarding competition from the mouths of judges called upon to decide actual cases involving competition. Theirs is no academic theory evolved in the seclusion of the closet, but conclusions reached in the adjustment of controversies between man and man.

There are plenty of courts that have held otherwise, that have talked about competition in the old way, that

[1] M. & L. R. R. Co. *vs.* Concord R. R. Co., 66 N. H. 100.

[2] City of London's Case, 8 Co. 125.

[3] Kellogg *vs.* Larkin (1851, 3 Pinney Wis.) 123, 56 Am. Dec. 178-181.

have, in short, treated it as a fetish, instead of critically examining its claims to immunity.

VI

The world is filled with men who repeat, parrot-like, what others have said; that is the easy, the natural, the safe thing to do. It may be just as well that the overwhelming majority of men do this, for stability depends upon tradition, but progress follows in the footsteps of him who challenges, who utters the insistent "Why?" who accepts nothing as hearsay, but goes straight to the root of things and finds out for himself.

It is the business of the office-seeker and holder to curry favor—that is, he thinks it is, and it is this conviction that governs his tongue. He speaks the things he thinks the people wish to hear. He does not know they would like to hear the new thing and the true thing. He does not realize that while he is repeating what he has heard and what he has read, reiterating the worn-out phrases, there may be those in his audience who are thinking about coming things, who are eagerly listening for just one word that will throw some light on the problems of the day, and they are the only ones worth talking to.

Of what use is it to talk to the laborer or the small merchant about the glorious benefits of the old competition when they know it is the old competition that is stifling them, when the laborer knows that his Union has absolutely suppressed competition in his particular trade, when the merchant knows that if the competition to which he is being subjected at the moment continues six months, he will be bankrupt?

The man who hires labor or buys goods may applaud the familiar utterance, but even he has his competition in

what he has to sell, and while he would like to destroy the labor union and prevent the merchant from coöperating with other merchants, he, himself, has his own interests he would like to protect by some form of combination with his competitors.

While these words are being written the Governors of a number of Southern States are conspiring together to devise a scheme whereby their cotton-growers will get better prices for their cotton, whereby competition will be checked, production controlled, and, in the end, the mills be made to pay more for raw material. A laudable enterprise surely—from the point of view of the grower—but how about the consumer, and how about the law, and how about the speeches of those very Governors in support of those laws which say competition must flourish unfettered?

Congressmen and Senators from the cotton-growing States are especially eloquent in this behalf, the Sherman law has no more fiery and uncompromising defenders—when Northern trusts are involved.

VII

Efforts to suppress competition in products of the soil are not confined to the Southern States. In the North high political officials have lent the sanction of their presence and approval to movements to control prices of farm products. In fact, so far as the politician is concerned, he sees no evil in the union of laborers, cotton-growers, tobacco-growers and farmers—i. e., voters—to absolutely fix prices; they may combine, strike, boycott, pool, store, destroy, do anything they please, but let the capitalist, the employer, the manufacturer, do a tithe of these things and there is trouble.

To the politician the combination of labor can do no

wrong, the combination of capitalists can do no right. Only the judge who is called upon to administer the law to all men alike sees no distinction, and, following the letter of the law, impartially condemns combinations of both, thereby proving the futility of the law, for if there is anything certain it is that combinations of labor are with us to stay in one form or another, and it is no whit less certain that combinations of employers are here to stay, and it is for society to make the best use of both.

VIII

Times are changing and, with the times, business methods. Secrecy is yielding to publicity, men are coming out into the open and dealing more fairly with one another. As an inevitable result competition is undergoing a change, the old is giving way to a new, true competition is taking the place of the false.

The country feels that things are happening, but they are happening so fast it does not quite comprehend. The people do not understand the new competition that is slowly but surely taking the place of the old, courts do not understand it, legislatures do not understand it, therefore they oppose it and vainly try to preserve the old and vicious order of things—try to make men fight when they no longer wish to fight, to make them destroy one another industrially and commercially when they are striving to establish industrial and commercial peace.

The old cry, "Competition is the life of trade," is yielding to the new cry, "Coöperation is trade." The old cry is the echo of primitive and barbaric conditions; it never did mean competition on terms of fairness and equality, it meant the relentless suppression of the weak, the merciless

triumph of the strong, it meant methods so questionable they are now condemned as criminal.

The old, with its unfair advantages, its secret prices and rebates, its conspiracies to ruin competitors, help favored parties, localities, towns, at the expense of others, is passing; the new is taking its place, is winning its way in spite of ignorant clamor, regardless of legislative enactments, in the face of hampering decisions; it is winning its way because, fundamentally, *it is right—it is progress.*

CHAPTER II

WHAT IS COMPETITION?

I

What is competition?

The man in the street laughs at the question: "Why, everybody knows what competition is."

"Well, what is it?"

"It is the effort of the other fellow to get my job," the laborer cries.

"It is the effort of the other man to get my customers," the merchant and manufacturer respond.

"It is the fierce struggle for life and means, the elimination of the weak, the survival of the strong," the biologist says, and dismisses the subject.

Is it so?

Then competition is not worth preserving; it is a biological rather than an economic, a natural rather than a human condition; it is part of the philosophy of evolution rather than a matter of ethics; it is on a level with those relentless forces with which men are striving; like the familiar doctrine of the "survival of the fittest" it is more than non-human *it is inhuman.*

II

Granted that the universe is an evolution, that man is an evolution, that society is an evolution—that all are products

of that one fundamental law, the survival of the fittest, which is neither more nor less than competition in its fiercest form—what then?

Do we pass laws to foster this competition, to make it more certain that the weak disappear and the strong survive? Do we bend all our efforts to that end?

No, only in the breeding of plants and animals do we try to aid the law of natural selection, and even with animals we are tender toward the sick and old—toward those nature is trying to eliminate. We even pass laws to protect them and organize societies to help them.

When it comes to human beings only savages permit the law of the survival of the fittest to work unchecked; they expose infants, abandon the sick, kill the aged—they are evolutionists without human compunctions, they are biologists without hearts.

Civilized man, in his struggle for existence, forgets that law which the evolutionist says is the foundation of progress. Were it not for a few savage examples to the contrary we might say he fights it instinctively.

But fight it he does with laws, with customs, with moral sanctions, with social conventions, with individual standards of right and wrong, with praise for those who sacrifice their lives for others, with words of scorn for the selfish and cowardly—in short, with almost every legal, social, and moral force do men fight for the preservation of the sick, the weak, the helpless, the very beings the cold doctrine of evolution says should be eliminated.

Of the struggles for existence in the animal world Huxley said, "The creatures are fairly well treated and set to fight; whereby the strongest, the swiftest, the cunningest, live to fight another day."

Of the struggle in the human world he says in a later lecture, "Social progress means a checking of the cosmic forces at every step, and the substitution of another, which

may be the ethical process; the end of which is not the survival of those who may happen to be the fittest, in respect to the whole of the conditions which exist—but of those who are ethically the best."

And the proof of the ethically best, of the purest and loftiest souls, lies in the care taken of, and the sacrifices made for, the weak, the idiotic, the insane, the criminal—if you please.

In the language of another, "If it be true that reason must direct the course of human evolution, and if it be also true that selection of the fittest is the only method available for that purpose, then, if we are to have any race improvement at all, the dreadful law of the destruction of the weak and helpless must, with Spartan firmness, be carried out voluntarily and deliberately. Against such a course all that is best in us revolts."

III

In his *social* relations man has made vast strides in advance of the bald biological proposition, progress is a survival of the fittest.

In his *commercial and industrial* relations he is in that savage condition wherein the "destruction of the weak and helpless" is carried out, not only "voluntarily and deliberately" and "with Spartan firmness," but with precisely the satisfaction a Roman audience watched one gladiator slay another, or a wild beast devour a Christian.

A distinguished professor says: "The big company has a right to beat the little one in an honest race for cheapness in making and selling goods; but it has no right to foul its competitor and disable it by an underhand blow." [1]

That is the theory of the thorough-going evolutionist—

[1] Prof. John B. Clark, "The Control of Trusts," p. 15.

the "big fellow" has the right to survive because he has the brute force, the "little fellow" must and should go to the wall in order that the "fittest" may live and the commercial race be improved!

Strange how these crude propositions drawn from natural development persist in the field of economics long after they have disappeared from the field of ethics.

In all social, mental, moral progress, in their daily lives, men give the lie to the proposition that the strong have the right to elbow the weak to one side; on the contrary, it is recognized that the most precious privilege of the strong is the succoring of the weak—that is life at its best.

If such is the law of man's social, intellectual, and moral development, why should not the same high obligations obtain in his commercial and industrial development?

That is a question every writer, every speaker on the subject should ask himself, and remain silent until the answer comes, for at heart it is *not a question of making money* but of *making men.*

It is a question every legislator should be able to answer before he frames new laws to encourage the old, the natural, the brutal competition.

Why pass laws to help one man to get the work, the customer, the livelihood, the very bread of another? Why copy nature in her most drastic mood?

IV

Nature is merciless, she knows no pity. "Survival of the fittest" is her goal. The way is strewn with corpses of the weak, with the débris of the rejected. Nature has no use for the lame, the halt, and the blind; her prizes are to the strong, and to only those of the strong who have no heart, who unfeelingly trample on the necks of others. The

slightest hesitation is fatal; the man who lags behind to lend a helping hand never catches up; the man who lifts the weak, carries the old, sits by the side of the sick, is a fool.

Nature's competition is a battle in which no quarter is given.

Why should man compete so blindly, so mercilessly? Why should we seek to make it a law of the industrial world that only the young, the strong, the vigorous shall find employment?

Why should it be a law of the commercial world that only the big, the rich, the powerful shall survive?

Because that is the natural order of things it does not follow it should be the human.

The human law should be not the survival of the strong, but *the survival of all,* of the best there is in all, and, oftentimes, there is more of good, more of real value to humanity in the weak than in the strong.

The decrepit body may be of little use to nature, but to mankind it may possess a priceless content, and even though the aged are a burden from a material point of view, they are needed to develop those qualities of sympathy and unselfishness, of devotion, and love that lift men toward the angels.

No, competition—true competition—is not the mere striving of two men to get the same job, the same customer, the same material advantage—it must be something finer and better than that.

V

Toward contests for industrial success the attitude of the American public is that of the eager spectator at a prize fight—the fiercer, the bloodier the contest the better; the slightest sign of relaxation on the part of either contestant, the slightest sign of a disposition to quit is greeted

with howls of derision, the fight must go to the limit, there must be no let-up before the final blow, and the greater the punishment received by both the more successful the event —from a sporting point of view.

With just that indifference to the fate of the individual does the public watch two merchants or manufacturers struggle for supremacy. Everybody knows the contest cannot last long, that one or the other, perhaps both men, will go into bankruptcy to the detriment of creditors, employees, families. Everybody knows that when one is disposed of, somebody—and that "somebody" is the public—must pay the cost of the wasteful rivalry, that, in the long run, no good can result from men trying to ruin each other by selling goods below cost, yet if the two try to get together to put an end to the disastrous competition they are liable to prosecution as criminals. If they organize a company to own and operate both their stores or factories the combination is a monopoly, or in restraint of trade, and a violation of law. The public, like the spectator at the prize fight, howls in anger at the slightest sign of cessation of hostilities before a "knock-out."

That sort of competition is not worth while. It is not worth fostering and preserving. It savors of the dark ages of progress, of those primitive and savage conditions when the weak were abandoned, the old were killed. It is a curious persistence of a natural, a biological law in the industrial world long after man in his social and moral relations has advanced to higher and finer ideals.

Morality has made progress in every department of human thought save that of economics. Ethical standards have been set up in every branch of human activity save that of making money.

VI

Of all the rivalries in which man engages brute competition in the production and distribution of wealth is the most contemptible, since it is the most sordid, a mere money-making proposition, unrelieved by a single higher consideration.

This is not the fault of competition—of rivalry as such—but of our industrial economy. There is nothing inherently wrong in rivalry in the large sense of the term; on the contrary, it is a most powerful incentive toward *perfection,* ethical, æsthetic, and material; it is the most powerful incentive toward *coöperation,* which is the foundation of progress.

Rivalry—competition in its broadest significance—is the *earnest, intelligent, friendly striving* of man with man to attain results *beneficial to both;* it is neither relentless nor indifferent; it is neither vicious nor vindictive, it is not inconsiderate, nor is it wholly selfish; it is not mechanical, but human, and should be, therefore, sympathetic.

CHAPTER III

COMPETITION IS WAR AND "WAR IS HELL"

I

Academic definitions do not help much toward ascertaining what competition really is.

One says it is the "aspiration of two or more persons to the same office, dignity, or other advantage," which is about as illuminating as to say it is a—word.

A little more specifically it is said to be, "the rivalry which exists between manufacturers, merchants, etc., whether concerning the quality of their products, their merchandise, etc., or concerning prices, with a view to sharing the profits of the same branch of commerce, industry, etc." [1]

[1] A writer in the last edition of the Encyclopedia Britannica says: "Competition, in the sense in which the word is still used in many economic works, is merely a special case of the struggle for survival, and, from its limitation, does not go far toward explaining the actual working of modern institutions. To buy in the cheapest market and sell in the dearest; to secure cheapness by lowering the expenses of production; to adopt the less expensive rather than the more expensive method of obtaining a given result—these and other maxims are as old as human society. Competition, in the Darwinian sense, is characteristic, not only of modern industrial states, but of all living organisms; in the narrower sense of the 'higgling of the market,' as found on the Stock Exchange, in the markets of old towns, in medieval fairs and Oriental bazaars. In modern countries it takes myriads of forms, from the sweating of parasitic trades to the organization of scientific research. Economic motives, again, are as varied as the forms of competition and their development is coeval with that of human society.

"They have to be interpreted in every age in relation to the state of society, the other notions or ideals with which they are associated, the kind of action they inspire and the means through which they operate. Apparently the same economic notions have led in the same age and

A better definition is that it is "The effort of different individuals engaged in the same line of activity each to benefit himself, generally at the other's expense, by rendering increased service to outside parties." [1]

A German writer separates the struggle for existence into two divisions, (a) struggles for domination, and (b) struggles for annihilation. "The struggle between buyer and seller in a bargain is of the former sort; each tries to make the other serve him as fully as possible, but does not desire his annihilation. The struggle between different buyers, or between different sellers, is of the latter class; each is desiring to get rid of the other so far as he can. *Competition, then, is the legalized form of the struggle for annihilation* in modern life. . . . Legalized because of its tendency to benefit an indefinite number of third parties, and thus become a means of collective economy of force and of general benefit to society." [2]

II

Why is it so difficult to define competition? Why are the definitions suggested so vague in terms they include almost every motive that controls human effort?

in the same nation to monopoly and individual enterprise, protection and free trade, law and anarchy. In our own time they have inspired both the formation of trade combinations and attempts to break them up, hostility to all forms of state interference, and a belief in collectivism."

[1] "Dictionary of Philosophy and Psychology," edited by James Mark Baldwin, Ph.D. The definition and article are by President A. T. Hadley, of Yale, who goes on to say: "Important as the term 'competition' is, there have been few attempts to define it." It is not taken up in Malthus' "Definitions." Mill lays down important propositions about its action, but seems to assume the fundamental meaning of the term as self-evident. Walker defines it by antithesis, as opposed to combination, custom, statement. Marshall says: "The strict meaning of competition seems to be the racing of one person against another with special reference to the bidding for the sale or purchase of anything."

[2] Article above referred to.

The trouble is we attribute too much to competition; it is either feared as an evil or worshipped as a fetish, it is held accountable for nearly everything that happens, not only in the industrial and commercial world, but in the development of society, of even life itself; it is a biological, a sociological, a philosophical, an economic, a political term, used indiscriminately in a thousand connections, meaning one thing here, another, and fundamentally different thing, there.

In short, competition is on a level and practically synonymous with terms such as "struggle," "contest," "rivalry," hence its broadest definition can be no more specific than their definitions.

Everybody knows what *a* competition is, but no one can say off-hand what competition is; everybody knows what *a* struggle is, but few could give a definition of the term so comprehensive as to include every conceivable struggle.

That is the trouble with defining competition generally. It must be considered, not necessarily defined, in connection with each particular rivalry.

In its elements competition is:

1. The effort,
2. To secure,
3. An advantage over others.

But the same is true of "contest" and "rivalry." Yet everybody knows, or has the feeling, that competition has a meaning of its own, especially when used in connection with trade and commerce, and so it has, but it is a meaning that cannot be defined because it is not so much a term of specific significance as it is the appropriation by long usage of a particular word to a particular connection.

"Contest is the life of trade," or "Rivalry is the life of trade" would answer just as well and mean as much.

Biology has appropriated the word "struggle"—"strug-

gle for existence"—"competition" for existence would have answered just as well.

The biologist may lay great stress upon the struggle for existence as a biological fact, he may even go so far as to elevate the fact to the dignity of a condition of progress, but he does not set up his "struggle" as a fetish to be protected by law, to be preserved and encouraged at all hazards, as political and economic writers insist their competition shall be fostered.

The humane philosopher accepts the "struggle for existence," but he accepts it reluctantly and regretfully; he seeks ways to modify it, he gladly looks to human sympathies and human coöperation to alleviate, if not completely nullify, the harsh law.

In sharp contrast, the old-school economist—followed by legislatures and courts—magnifies his competition to the proportions of a god, a god like unto those savage idols that demand the blood of human sacrifices, of women and little children.

III

The cry that competition must be preserved, must not be curtailed, must not be suppressed, is a senseless cry; in and of itself it has no more meaning than a cry that "struggle must be preserved," "rivalry must not be suppressed."

Some competitions, like some struggles, should be rigidly suppressed by law, others by custom, others by voluntary coöperation. *Per contra,* there are many forms of competition that are so beneficial they should be neither suppressed nor curtailed.

It all depends upon *the particular competition,* the particular form of rivalry.

If the average man were asked the following questions

he would probably make the following replies—each containing a broad qualification:

"Do you believe in *fighting?*"

"Why no—but there are times——"

"Do you believe in *contests?*"

"It all depends upon what they are."

"Do you believe in *rivalry?*"

"Of course, when it is——"

"Do you believe in *competition?*"

"Generally speaking, yes, but, hold on, what sort of competition do you mean?"

The man who says he believes in competition ninety-nine times out of a hundred has in mind the rivalry of those who are trying to sell him goods—he thinks that is a good thing.

The man who says he does not believe in competition has quite another sort of competition in mind and ninety-nine times out of a hundred it is his own rivalry with others in the same business to sell goods—he would very much like to modify or suppress that competition.

One does not have to go far afield for illustrations of the results of competition in the world of labor, trade, and industry to prove that, so far from being a good thing—much less a sacred thing—it is as disastrous to the material advancement of the community as war, and disastrous in very much the same manner—in appalling waste of time, effort, money, and life, for *competition is war,* and "war is hell," as General Sherman said.

The thoroughgoing evolutionist, the hero-worshipper, the believer in the superman, will argue that war has made man what he is and reason to the conclusion that humanity must be left free to "fight it out."

To that argument and that conclusion there is no adequate answer, since no man can say what the world would be to-day if there had been no wars, no struggles, no fierce

competitions resulting in the elimination of the weak; but one thing is certain, that, while there are and will be for generations—possibly forever—wars and struggles, and fierce competitions in which no mercy is shown, the intelligence and better impulses of mankind are opposed; the peoples of the earth may fight, but they *do not believe* in fighting.

IV

The foundation of society is not *competition,* but *co-operation.*

The family is a coöperative unit. Cain and Abel competed over their offerings and their rivalry resulted in murder. To-day the hand of brother is raised against brother as the result of fierce struggles for wages, place, position, power—the slugger and the dynamiter are Cain's successors.

The tribe, the village, the state, the nation, are all stages of coöperation, and the perfection of each depends upon the effectiveness of the coöperation.

Not until the thirteen colonies were willing to sink, in a large measure, their jealousies and coöperate was it possible to form this Republic, and the very term "United" States signifies the coöperative basis of our national existence.

The competition between the North and South culminated in attempted secession—an assertion of individualism—and a war that cost the lives of nearly a million men to reëstablish federal coöperation on a lasting basis.

Without coöperation progress, life itself, is impossible. It is a law of brute nature that animals coöperate for a time to feed and protect their young. Only in the very lowest forms of life is this coöperation lacking; the higher the form the greater the coöperation necessary if the species is

to be preserved. In the case of man the coöperation of parents is supplemented by that of the tribe, the community, the state, and, in the better days to come, the woefully imperfect present coöperation of the state will develop into an intelligent and far-seeing interest compared with which that of the parent to-day is ignorant and inefficient.

In the world of trade and industry success is the result of coöperation. *Division of labor is coöperation.* The vital condition that each man may devote himself to the pursuit for which he is best fitted depends upon coöperation.

Coöperation is interdependence, a sacrifice, and, at the same time, a gain of independence.

The farmer depends upon the manufacturer for his goods, the manufacturer upon the farmer for his food, but this very dependence leads to larger individual independence, to broader opportunities for individual development. If each man were obliged to produce all he needs the world would be in a condition lower than that of the lowest known savages, for with even them there is some division of labor, some coöperation.

The history of every people of every nation has been the history of the rise and fall of coöperation. The history of every industry has been a story of the rise and fall of coöperation.

Every partnership, every association, every corporation, every trust is coöperation—for what? To produce results, to get larger returns for time and money spent.

Whether this form or that form of coöperation is right or wrong is not here under discussion; only the effect of cooperation as distinguished from competition.

The terms as heretofore used are diametrically opposed. It is the purpose of this book to show wherein the New Competition is a highly developed form of coöperation, but the New Competition has little in common with the old.

So far from promoting progress, competition stays and hinders; it generates the bitterness, the jealousy, the distrust that disintegrate families, partnerships, classes, states, and nations.

Competition is progress only in the sense that the war of the Rebellion was progress, in that it resulted in a stronger coöperative commonwealth; a result that intelligent men should have achieved by peaceful means.

Rightfully viewed, there is not a single good result accomplished by man in politics or economics commonly attributed to wars, struggles, competitions, that should not be attained by intelligent and far-sighted coöperation.

That it should be argued that the lives of a million men, the tears of more than a million widows and children were necessary to more firmly cement together the states of this union is a lamentable confession of human incompetency.

The argument that it is necessary for countless numbers of men, women, and children to freeze, starve, suffer annually in order that competitive conditions in the labor and industrial world may be maintained and society profit by their misery, is again a lamentable confession of human incompetency.

The proposition that thousands of merchants and manufacturers, of builders and contractors must be encouraged to ruin each other in order that the community may get goods at less than cost is another lamentable confession of human incompetency.

The blind worship of competition is the root of all these errors.

V

The benefits of competition have been classed as follows[1]:

1. *"As the regulator of prices, this is the one on which the greatest stress has been laid in the past."*
2. *"As a stimulus to productive efficiency and especially to the introduction of new methods."*
3. *"As a means of educating the community in rational egoism, teaching its members that they must seek their industrial success, not in giving as little as possible to those with whom they deal, but as much as possible."*

As a matter of fact, competition leads to precisely contrary results, and the fiercer the competition the more disastrous the outcome.

1. Coöperation, whether voluntary or involuntary—compelled by law—is the *only regulator* of prices. Competition, free and unfettered, is absolutely destructive to all stability of prices. Before the Interstate Commerce Law, regulating railway rates, competition reigned and rates varied arbitrarily from day to day, from person to person, from place to place, with countless rebates and secret favors; to a certain extent the railroads, from time to time, coöperated to control conditions by pools and associations, but not until the Government stepped in and called a halt to vicious competition were rates regulated in any permanent manner.

The proposition is too simple to call for demonstration since every man knows that it is the appearance of a competitor that causes prices and wages to drop, and every

[1] By President Hadley, in the article referred to.

labor-unionist, and every small manufacturer know that where coöperation is effective wages and prices are more constant.

The very *theory* of our *anti-trust laws* is that they *suppress coöperation,* and, by encouraging competition, promote the widest possible fluctuations in prices—for the supposed benefit of the consumer who is—the law forgets—first of all a producer.

2. This error is more firmly grounded. If competition is a disintegrating and wasteful force then it cannot possibly be "a stimulus to productive efficiency," and it is not. Its effect is altogether disheartening and discouraging. It may seemingly result in introduction of new methods and new inventions, but progress in these directions is due to broader influences.

The great inventions of the world were not due to competitive conditions—competition had no more influence on Watts than on Newton. Bell's interest in the telephone was primarily scientific. Few inventions have been so perfect at the outset that competitors could at once make use of them. On the contrary, it has usually required long cooperation of labor and capital, in the face of jeering opposition, to bring an invention to practical perfection.

It is true artificial monopolies resting upon grants from the crown or state have been notoriously indifferent to advancement, but not so with monopolies resting upon the ability of men to hold trade; they are as quick to develop improved methods as if they had many competitors.

The Standard Oil Company was charged with having been for a generation or more a monopoly, yet no one would claim its methods were not up to date—the actual complaint is that its methods were *a little too advanced* to admit of competition. As a producer and distributor of oil that company has led the world.

The United States Steel Corporation is charged with

being a monopoly,[1] and beyond the reach of competition, yet no independent steel man would assert for a moment that the Corporation is indifferent to new methods and processes —in the scientific application of recent discoveries it is a pioneer, its experiments are being watched with interest.

It takes capital, strength, courage to try new inventions, new methods, and competition exhausts a man's capital and saps his courage.

While the old competition accomplishes none of the good results attributed to it, the coöperation at the basis of the new does.

3. Competition does not educate the community in "rational egoism," but, on the contrary, develops an irrational and belligerent individualism—ending in artificial combinations and consolidations.

It does not teach that the basis of industrial success is the giving as much as possible, but, on the contrary, the fundamental proposition of competition is to give as little and get as much as possible. Competition is the most powerful incentive to selfishness known to man—*it is selfishness.*

"Rational egoism," altruism, unselfishness, generosity, have their foundation in coöperation.

Coöperation is essentially constructive; competition destructive.

Even war is a conflict between forces, the strength of each of which depends upon the degree of coöperation—of unity—attained, and it is easily discernible from the most casual survey of history that whatever of good comes out of war depends upon the extent to which the successful side is more closely knit together by the force of the conflict.

[1] As a matter of fact, the two companies referred to were "monopolies" only in the sense that they dominated their respective industries; aside from patent, natural, and public-service monopolies few real monopolies exist in this country.

All there is of good in competition is its tendency to result in closer coöperation, greater harmony, closer and finer relations between the, for a time, conflicting units.

Disintegration leads to integration—if not the world would have been doomed long ago.

Integration attains a certain degree of perfection and again disintegrates, but each ebb and flow must mark a new high level in human achievement, else there is no real progress.

VI

A right understanding of what competition is in the world of trade and industry is so important that we will give a few instances, each of which is typical of a large class.

In the labor world a small town is dependent upon a large factory, it has grown up with the factory, it is prosperous because the industry is prosperous. One of two things happens: (1) The owners of the factory see an opportunity to increase profits by bringing in cheaper labor; or (2) the men employed ask for better wages and the owners meet the demand by threatening to employ or actually employing cheaper labor from other places.

The foregoing is a bald outline of a situation that often prevails where there is a controversy between employers and employees regarding wages and terms of employment. The strength of the employer lies in the struggle—the competition—of men for employment; the weakness of the employees who have grown up with the factory, who own their homes, lies in this competitive condition which imperils not only their places but their savings.

VII

Formerly mines, factories—employers generally—could import labor from abroad; competition was world-wide. The law now forbids that sort of competition. Many state laws go farther and, by ingeniously devised restrictions, seek to make it difficult for employers to bring in "strike breakers"—i. e., competing labor—and, if brought in, make it difficult to adequately protect the new comers.

So much for "competition" in the labor world; it is not looked upon as the good thing it is supposed to be, and labor unions are doing all they can to absolutely control it; their methods may be crude and brutal, but they are struggling with a crude and brutal competitive condition.

Near one of the principal hotels in New York there was for years a small and well-managed drug store. In a quiet way it did a very good business. One day two stores next to it were rented and in a few weeks merged into a glass and marble "palace" that sold drugs at "cut rates" and nearly everything else that would attract custom. The employees of the small store were all men except the cashier; the employees of the large are mostly boys and girls.

The inevitable result was the disappearance of the small, it closed up; the large is simply one of a "chain" of "cut rate" drug stores operated by one large company; against such competition the individual owner, or even the owner of two or three stores has no chance; the appearance of the big company in a block is a signal for the small to disappear.

This is competition; there is no question about that. It is a very modern sort of competition. It is typical of the department store, the mail-order house, the company with branches here, there, and everywhere—it is the last word in "cut rate"—"cut throat" competition.

The bloodless economist will say, "Let them alone, it is evolution, the fittest will survive."

But that is just the question, will the *fittest* survive? The strongest may, but *fittest!* That is another question.

If survival means the displacement of men by women and girls, and the disintegration of the family into competing units, if it means a cheapening of quality all around, above all a cheapening of the atmosphere, if it means loss of personal interest and personal touch, then it may not be the *fittest* for the betterment of either those directly interested or of the community as a whole.

VIII

Some years ago there was an old and long established company in England the products of which were standard the world over.

A powerful American company wished to buy the English company and control the business in Great Britain. The English company had no desire to sell and refused all offers.

The American company, to force a sale, established a factory in England, flooded the country with an inferior and cheaper product, demoralizing the trade. In the end the English company was forced to sell.

That was good old-fashioned competition. The practice is common; it is common in the small town where the large dealer cuts prices to force a small to either sell out or get out. It is done in the world of "big business" when the large corporation deliberately invades the territory of the small and, by selling below cost, compels the latter to dispose of its business. In fact, it is part of the every-day tactics of the old competition.

"And why not?" some one cynically asks. "Doesn't the

public reap the benefit in the way of low prices while the war is on?"

"Yes, but——"

What is the use of arguing with a man who thinks that competition of that character is beneficial?

IX

Then there is the disreputable competition of those who sell out and immediately go into business again in opposition to purchasers who buy in good faith.

The law permits the purchaser to take a limited contract restraining the seller from immediately competing, but, aside from such contracts, and often in evasion of them, men who sell their establishments with good-will take the money they receive and open up in the same town, the same block, to get the very trade they sold.

This is dishonorable but—competition, and the community is supposed to benefit economically from a condition that is morally bad—does it?

X

The great mass of mankind are both sellers and buyers.

As sellers they would stifle competition; as buyers they would foster it.

Unhappily, they actually try to do both. The farmer demands freedom to organize his coöperative societies, but, in the same breath, demands laws to prevent other classes doing the same thing.

The laborer insists upon his right to organize unions and dictate wages, and, in the same breath, calls for the enforcement of the law against the organization of employers.

The dealer and manufacturer is caught between the upper and nether millstones—he is obliged to pay prices fixed by farmers' organizations and wages fixed by labor unions, but cannot—under the laws of most of the states—organize with others for his own benefit.

This is a condition so manifestly unfair and illogical it cannot exist for long, and while it does exist it engenders mischief and class hatred.

The problem presented is by no means peculiar to this country, for the nations of Europe are struggling with it, but the condition is more acute here because we have forty-eight states and a federal government passing laws on the subject, and for nearly a generation passing laws—"anti-trust laws"—drawn in most drastic terms to suppress co-operation and promote competition.

XI

The Sherman Act was passed 1890.

Since its enactment many suits have been begun to dissolve "trusts"—combinations of dealers and manufacturers.

Not a single suit has been begun to dissolve any one of the large combinations of labor or of farmers, though the existence of such combinations arbitrarily controlling inter-state commerce is a matter of common knowledge. See Chapter XIX.

What is the net result of the enforcement of that law?

A few "trusts" and a number of lesser combinations have dissolved, but where one has been suppressed five hundred have taken its place. No such era of combination and coöperative organization has ever been known in the history of the world as the period of twenty-odd years since the passage of the Sherman act.

This movement has not been organized in "defiance" of

the law, but in response to irresistible forces—the same forces that brought the partnership, the corporation, the labor union, into existence; the forces that compel men to work together in harmony to accomplish the things modern society demands of them.

Just as the stage-coach, owned and driven by one man, has given way to the railroad, owned and operated by a hundred thousand men, so the individual laborer, farmer, merchant, small manufacturer, merges his identity in that of his union, his coöperative society, his large corporation, his "trust," to secure larger results, to do things on a larger scale, a scale commensurate with the marvelous development of the world of to-day.

XII

The country has reached the parting of the ways. It must make its choice, and make it intelligently—either the *competitive* or the *coöperative* basis. If the *competitive,* then no class should be permitted to organize a coöperative movement to get more for what it has to sell; if the *cooperative* basis, then no class should be prevented from organizing—either one policy or the other, the two cannot exist together.

The man who argues for competition must be consistent; he must argue against farmers' coöperative societies and labor unions just as vehemently as he argues against combinations of dealers and manufacturers.

XIII

We are in course of making this choice; Congress is debating constructive legislation to supplement or take the

place of the Sherman law, which is purely destructive in its intent.

But, judging from the debates in Congress and its committees, this new legislation is not being considered in the spirit it should be. Many of the bills offered are directed against coöperation. There is still a belated cry for a more drastic "anti-trust" remedy, for a law that will purge the country of all combinations—all combinations *except* combinations of farmers and combinations of labor—no statesman proposes to frame a law that will interfere with them.

But while many of our law-makers refuse to see conditions as they are, that is by no means true of all, and certain it is that as time goes by the conviction gains ground in Washington that the country is passing slowly but surely from the old competitive basis to the coöperative, and what is needed is not futile laws directed against coöperation, but more legislation in aid of the new spirit that is abroad in the land, legislation that will help men to come together and work together, securing for the public the maximum of good from coöperation, and, at the same time, protecting the people and all classes from abuse of power by combinations.

Many additional illustrations of unfair, oppressive, and disastrous competition are given in the following chapters, but no reader need go beyond his own experience and observation for facts.

The farmer knows that competition means lower prices for his produce, and so all over this country farmers are organizing coöperative societies,[1] to enable them to sell what

[1] In addition to the many farmers' coöperative associations enumerated in Chapter XIX, the following just at hand is in point: "Kentucky farmers are preparing to organize a farmers' union covering the entire state, and to establish a central store in every county seat. To date this union has been organized in only a few counties. Wherever the coöperated stores have been established they have given satisfaction.

they have to sell for more money, to get larger and surer returns.

The laborer knows that competition means lower wages, therefore he joins a union to suppress competition and advance wages.

The merchant and manufacturer know that competition means "cut-throat" prices for what they have to sell, hence they, too, try to form coöperative organizations to lessen competition; but the law is not so indulgent to them, it tries to prevent their doing what farmers and laborers do.

The only class in the community that profits from unrestricted competition is the class that has nothing to sell, people who live on fixed incomes; their interest is in low prices. If they can buy what they want below cost they are happy, even though their advantage means ruination to the farmer, the laborer, the dealer, the manufacturer. But this class is small in numbers and importance as compared with the rest of the community, and not a few would have difficulty in justifying their right to be non-producers in any fair theory of social organization.

"Solicitors for members are constantly at work, and by the time the tobacco, wheat, and corn crops are ready for harvest, many more counties, it is expected, will take up the plan.

"A meeting held in Lexington was attended by leading farmers of different parts of the state. Many of these were members of the old American Society of Equity, established several years ago to force higher prices for tobacco and other farm products from trusts, which then controlled these products.

"From the agitation started by the American Society of Equity came the Burley Tobacco Society, which now controls the production of more than 200,000,000 pounds of tobacco annually in Kentucky, Ohio, Indiana, and West Virginia."

Another instance from Illinois:

"Farmers of Cumberland and Cole counties signed an agreement to-day pledging themselves not to raise broom-corn for five years unless the dealers will guarantee them a price to exceed $120 a ton in advance of planting. For twenty years the two counties have been the broom-corn center of the country."

President Taft recently advised consumers to form coöperative societies, after the English type, to eliminate the profits of exchange by buying direct from producers. And Colonel Roosevelt, speaking to Minnesota farmers, has advised them to form coöperative societies to eliminate the intermediate dealers and sell direct to the consumers.

CHAPTER IV

GROWTH OF CO-OPERATION

I

Every railroad, every telegraph, every telephone, means coöperation, and coöperation means combination in one form or another.

Before the railroad merchants in towns fifty miles apart did not compete with one another; each could charge practically what he pleased; prices could vary fifty or a hundred per cent. without affecting trade appreciably.

A low man might draw trade from territory within, say, twenty or even fifteen miles of the other town, depending upon condition of the roads, season of the year, etc., but the high man in the second town would have customers the other could not reach, customers who could not afford to go the extra distance to make the saving in price.

A railroad between the towns changes their economic relations; now a very slight difference in prices draws trade one way or the other.

Theoretically, and, in large measure, practically, the measure of the opportunity of the merchant in one town to charge more than a merchant in another for like goods, is measured by the fare to and fro between the towns, plus the element of loss of time.

When an electric line is built, running cars every half hour and carrying passengers at nominal rates, the two

towns, so far as prices and competition are concerned, virtually coalesce.

As a matter of fact, smaller towns within twenty-five or fifty miles of large cities are placed in positions of great disadvantage by the rapid spread of electric car lines; they are made suburbs, and trade is seriously affected.

Cities attract trade with a force far beyond the economic advantages offered. Men and, especially, women like to do their shopping in the larger places, even though they lose car fare and time by doing so, and pay as much as their local merchants ask for the same goods.[1]

Railroads were slow in building compared with the phenomenally rapid spread of electric lines incident to the development of the trolley. The latter are so easily and inexpensively constructed they have spread everywhere within a few years; they and the telephone, with rural postal delivery, have brought the farmer into the city, until it is now as easy for the farmer's wife to do her shopping and marketing as it was for the townsman's wife a generation ago.

The parcel post will still further annihilate distance; it will place the department store and the big mail order house five hundred or a thousand miles away on a footing of equality with both the country and the city merchant; it will intensify competition by bringing in new and powerful factors.

The country merchant sees this, he reads the handwriting on the wall, and he joins hands with the express companies in opposing the parcel post. He is willing it should be tried on rural deliveries because that means he will be able to get his parcels delivered to his customers at a nominal cost while the city house will be excluded.

[1] "Not long ago the merchants of a Wisconsin city made vigorous protests against the low passenger charges to Chicago, in order to keep the people in the city from going to Chicago to purchase supplies."—Prof. R. T. Ely, "Evolution of Industrial Society," pp. 249-250.

But the parcel post is at hand and it will affect local trade very much as the railroads affected it years ago, very much as the trolleys have affected it in times more recent—in short, precisely as every cheapening of transportation is bound to affect trade, by widening the competitive area.

II

There are two ways in which the competition of a given dealer or manufacturer may be increased:

(a) By the establishment of a rival in the locality—the *intensive* way: (b) by the widening of the area of competition by improvement in facilities for communication and transportation—the *extensive* way.

So far as the local merchant is concerned one may be as disastrous as the other, since both mean division of trade.

So far as the community is concerned the effects are different. In the first case a new shop is added to the sum total of all in existence (unless it has been moved from some other place); in the second case no new capital is invested or labor employed, save as some additional may be required by the larger establishments to take care of the trade absorbed from the smaller.

In times past it was competition of the intensive sort that men feared and resented. The local carpenter, bricklayer, blacksmith, miller, merchant, fought the newcomer as an intruder.

The medieval guilds were organized in large part to protect localities against intensive competition—competition within the gates. The modern labor union, with its restrictions regarding apprentices, its opposition to immigration, and its arbitrary requirement that unionists from other places must take out local cards—if they can—fights intensive competition, the intrusion of the stranger.

Formerly extensive competition—the competition of distant localities—was a negligible quantity, made so by difficulties in communication and transportation, by tariffs, taxes, brigandage, etc., etc. Nowadays it is the extensive competition, the competition of city with city, state with state, country with country, that is affecting prices and wages. And it is this competition that must be dealt with in a big way and a broad way. It cannot be suppressed, it cannot be checked, unless mankind wishes to suppress steam, gasoline, and electricity—but it may be controlled and transformed.

III

The history of nations shows how the pendulum of progress swings to and fro from perfection in little things to perfection in big things. At the same period one nation may be doing things *intensively,* while another is doing things in a spirit of *extension;* one may be living a life of extraordinary fullness within its gates, another may find satisfaction only in conquering the earth.

Again at different periods the ambitions of mankind are widely different. For a time the nations are content within their borders, are absorbed in building their cities, their cathedrals, their monuments—in artistic and intellectual pursuits; the conflicts are few and personal or local in character; there is an astonishing development of every trade, every craft. Suddenly there comes a change, due, perhaps, to some great invention or discovery, or, perhaps, to the restless personality of some mighty leader who reflects the spirit of his times. The period of intense development is at an end; as if moved by one impulse the nations embark on a period of conquest, of discovery, of colonization; a period wherein local barriers are annihilated and countries come together in one grand clash, one supreme

struggle either on the field of battle or in the more bloodless but none the less fierce rivalry for commercial and industrial victories.

We are in the midst of one of those great movements, one of those world-wide conflicts. It is so fierce that again and again are nations on the verge of declaring war for no reason whatsoever except trade jealousy. Projects of territorial expansion are justified by commercial reasons. Controversies concerning this country or that, over China, Persia, Turkey, are in substance, if not in form, trade controversies.

The world has gone mad over trade and the problems of trade. Financiers and diplomats exhaust their energies trying to devise new schemes, new treaties, new tariffs whereby one nation can sell the world more than it buys, whereby the "balance of trade" can be turned hither and thither at the will of man—this is the era of "dollar diplomacy."

The conquests of Alexander, of Cæsar, of Napoleon, were as nothing compared with the struggle that is now on for trade supremacy—a struggle that is made fiercer from year to year by marvelous inventions and developments in means of communication and transportation. Peoples, heretofore safe in their isolation, are swept into the maelstrom—the globe is a sizzling unit.

IV

Intense competition makes for quality, *extense* for quantity.

At this moment the cry is not "how good," but "how much." In the mad race for wealth, for gross production, the beautiful is lost sight of, there is no love or longing for

perfection—it is "More, more, more—Oh God, give us more!"

With an indifference to the morrow that is criminal the earth is mined and denuded; future generations are being robbed of their patrimony; minerals, coal, iron, wood, are being rapidly exhausted.

It is true human ingenuity has met every emergency in the past and will probably suffice in the future; new forces, new resources will be discovered, but the surest relief from the present wasteful extensive competition which demands quantity is the return to intense competition which is content with far less but demands greater perfection.

Again, *extense* competition means combination on a large scale; *intense* is the opportunity of the individual.

The effort to produce quantity leads inevitably to the organization of industry, to the factory system, the large corporation, the trust—a break-neck pace in which to halt is to fall.

The effort to produce quality means a reversal of these steps, the disintegration of the factors of wholesale and indiscriminate production until the individual is permitted to emerge and impress his personality upon his work.

The change is bound to come, and signs are not wanting that this country is getting tired of the mere production of wealth in gross. It is demanding better things. It is demanding more sightly things in even the most matter-of-fact industries and enterprises. Take railroading, for instance; the depots and bridges that satisfied everyone a generation ago would not be tolerated in a country town today. There is an immense amount of thought and labor given to the more artistic designing of all kinds of machinery. There is a growing appreciation of the efforts made by owners of factories to cultivate their grounds and build their buildings so they will please rather than offend the eye.

The value of structures well built and perfectly kept, as an advertisement, is being recognized.

Compare the fronts and interior arrangements of the shops of to-day with those of a few years ago, the effort to make them look better is obvious even if the effect is often blatant.

There is a growing effort to make our cities and towns and all they contain more beautiful. This effort is crystallizing in the appointments of commissions, the organizations of societies and public bodies; it finds expression in laws and appropriations; it may make many attempts that are failures; it may produce ugly where beautiful effects were intended; but the point is, the cry for quality is making itself heard above the din of the demand for quantity.

Beauty is not a wholesale proposition; it dislikes the partnership; it avoids the corporation; it flees the trust. It is essentially personal. When America really demands beauty, demands it as loudly and insistently as it now demands wealth, many of the problems of to-day will find solution in the changed conditions, but, for the present, we have competition in the most extensive form the world has ever known, and the problems presented by that competition must be dealt with; we cannot wait the slow changing of ideals, the evils of the hour must be corrected; all that is false, vicious, unfair, must be eliminated. The race for wealth, for quantity, must be made a fair race in which all will have as nearly equal opportunities as human ingenuity can provide.

V

As already stated, this inevitable tendency of competition in the production of quantity is combination of forces, of strength, of capital and labor, in *large units* to secure greater results per dollar invested and per man employed.

This coöperation takes the following familiar forms:

1. *Partnerships*—association of individuals, the simplest and most primitive form of coöperation.

2. *Corporations*—in reality only a legal form of a large partnership, the chief advantage of which is the limiting of the personal liability of the partners—i. e., the stockholders.

3. *"Trusts"*—as they are popularly called; they are simply partnerships of partnerships or corporations; consolidations in one form or another of a number of existing companies.

The three forms are so many steps in the evolution of organized industry, and organized industry is absolutely essential if the maximum of quantity is to be produced at a minimum cost.

Inherently there is no objection, economic, moral, or legal, to any one of the three forms.

A partnership of companies—the trust—is as logical and legitimate a development of corporate organization as is the corporation from partnerships of individuals.

The trusts do not originate anything in novel and oppressive competitive methods; they are rather backward and clumsy—literally elephantine—in their attempts to do what individuals do. They suffer from a multitude of counselors, and those in control, however unscrupulous, lack the decision, the alertness of the equally unscrupulous individual in devising ways to promote his own business.

No unfair, oppressive, or illegal practice has been charged against a corporation or a partnership that did not have its origin and practical demonstration in the methods of the individual.

This is no plea for either the trust or the corporation; it is simply a suggestion that, before we charge upon legal entities of our own creation vices that are the common prac-

tices of individuals, we take an inventory of and frankly acknowledge our own shortcomings.

For instance, when the employees of the American Sugar Refining Company were found guilty of smuggling large quantities of sugar by tampering with the scales a great cry went up against the "trust," and, by induction, so to speak, against all trusts, as if cheating the government by smuggling was a new offense devised and practiced only by them.

The records of the custom house show that smuggling is the pet failing of American citizens who cross the borders. From time immemorial people have felt at liberty to "beat the customs" if they could.

All the sugar smuggled by the trust in a year probably does not equal in value articles smuggled into New York every six months by our "best people," by families, by children, by rich and poor, by high officials. The practice is notorious. In the year ending June 30, 1911, the United States District Attorney in the City of New York instituted seventy-four prosecutions and collected over two millions of dollars in fines and duties on smuggled goods. Not a day passes that the customs officials do not discover goods people "failed to declare," and collect the duties without prosecution; yet, with all their vigilance, probably nine travelers out of ten get by with dutiable goods that escape observation.

It would be easy to take up every specific charge made against a trust or large corporation and trace its origin to practices of individuals and small firms, practices that, in the case of individuals, are often looked upon by the trade as "shrewd" or "sharp," and, on the whole, rather creditable. Many a laudatory funeral sermon is preached over an unconscionable rascal.[1]

[1] In this connection Herbert Spencer's essay on "The Morals of Trade," though written half a century ago, is timely reading.

The writer holds no brief in defense of either the trusts or the practices referred to—as subsequent chapters will disclose—but the hypocrisy of those who assail large corporations, while at the same time asserting or assuming on the part of individuals virtues they do not possess, is so distasteful that the temptation to expose it cannot be resisted.

The demagogue who makes the welkin ring with denunciations of the trusts is silent regarding the short weights and measures, the adulterated goods, the poisoned milk used and sold by men in his audience. He never says to them, "The heads of trusts may cheat and defraud, but they only do on a large scale what *you* do on a small; they cheat the public, *you* cheat the women and babies in *your* neighborhood—people who know you and trust you. *You* buy goods of the trust and, in the main, you get the quality you order and you get full weight and measure. *You* dole out these same goods by short weight and measure, as official records show."

The man who should say such true things might imperil his reputation as a "trust baiter," but he might also gain votes and high office in the end, for the people like the truth even when it cuts.

The large corporation, the "trust"—call it what you will—is here to stay so long as competition, national and international, is to produce quantity. It is here to stay because it is an economic evolution. When quantity is the object men will coöperate together up to the point where coöperation ceases to produce the maximum of results by the expenditure of a minimum of effort—that is a self-evident proposition.

Any law that tries to check coöperative growth is a law against maximum efficiency and, therefore, contrary to the spirit of the age which demands, above all things, quantity, which demands labor- and capital-saving devices in all in-

dustries, and, in the last analysis, the trust is a labor- and capital-saving device.

VI

In so far as the "trust" is a monopoly, that introduces another and artificial condition, which must be dealt with by itself.[1]

But a monopoly is a monopoly whether possessed by a "trust," a partnership, or an individual, and, of all forms of monopoly, that of the large corporation is probably the most vulnerable, the least stable.

Missouri has a law limiting the size of corporations permitted to do business in the state to a capitalization of ten millions.

The amount may have seemed abundantly large to the legislature that passed the act, but the law is as absurd as it is futile, except for mischief.

A distinguished political leader proposes to arbitrarily limit any one corporation's control of an industry to 50 per cent.; if it controls 51 per cent. it is a bad trust—a proposition without a shadow of reason. Aside from its fundamental unsoundness it has its ridiculous aspects. The corporation that is anxiously trying to keep within its 50 per cent. might find itself in the clutches of the law by the unexpected retirement of a distant competitor, or a number

[1] "We must sharply distinguish between large scale production and monopolistic production. This is something that the author has been iterating and reiterating for the past fifteen years or more. Many others have also been saying the same thing, and it seems now to be generally understood. It is indeed strange that it should ever have been difficult to understand the difference between vast production and monopolistic production. One of our great retail stores, like Marshall Field's or Mandel Brothers', in Chicago, or Wanamaker's, in Philadelphia or New York City, represents very large scale production, but along with the large scale production there is the sharpest kind of competition."—Prof. R. T. Ely, "Evolution of Industrial Society," pp. 96-97.

of competitors in dull times might close down for the purpose of leaving the "trust" in control of more than 50 per cent. of the trade; their plea would be they were forced to shut down by the larger competitor—a sympathetic prosecuting officer would quickly institute proceedings.

A great majority of the states have so-called "anti-trust laws," which, while aimed at trusts and large combinations, hit practically all combinations, including partnerships and labor unions.

More of these laws in detail farther on. Here it is sufficient to say that, in so far as they attempt to check co-operation, they have proven disastrous rather than beneficial.

Combinations of forces to accomplish the things men wish to accomplish will continue to be made so long as such combinations are essential to the economic and speedy achievement of those objects.

When men cease to desire the things that large co-operative forces can produce most economically, then, and not till then, will such large organizations disappear.

VII

There are two distinct coöperative forces at work in every country.

A. Coöperation to *increase* production and *lower* prices.

B. Coöperation to *control* production and *increase* prices.

The two may, and frequently do, but need not necessarily, come in conflict.

VIII

Coöperative associations, such as partnerships, corporations, trusts, are ordinarily formed to *increase* production, to get larger results for the same outlay in time and money.

They are the logical, the inevitable outcome of old competitive conditions.

When two men who are competitors see they can do better, make more money, by working together, they form a partnership. When more men see they can do better by joining forces they form a corporation; when a number of competing corporations see they can do better by consolidating they form a large corporation, a trust—all so many steps toward securing larger results at lower costs.[1]

[1] "Competition between rival producers and distributors—plain, old-fashioned competition—tends to build up larger and larger enterprises, and ultimately to leave only one, or at most, a few great producers in the field. There are, indeed, exceptions to this rule—counter tendencies—but the proposition in the main is correct, and will rarely, if ever, be questioned. * * * It is the rule rather than the exception that trusts produce more cheaply than the individual producers whom they displace, and therefore they can make the cost to the consumer less than the individual competitors can. The cost of an article to the consumer—its ordinary retail selling price—depends not only upon the expense of making, but of marketing it. The great individual combinations cheapen their product, not only by lessening the cost of making, but infinitely more by saving expenses in marketing. * * * In the struggle of competition it is always the weakest that is trodden under foot, and it is generally the smallest that is the weakest. The process is continuous and cumulative. The little goes down before the large, and the large runs above and upon the little. This is not the result of trusts. It is the result of competition. It is not the result of trusts, but the cause of trusts. The underlying cause is the irresistible force that has never yet ceased and probably never will—*the demand for cheap production.* * * * Competition—the old-fashioned competition that weeds out the weak and inefficient—gives battle, then, first to the partnership, afterward the corporation, and in our day the gigantic corporation. The story of economic progress, from the dawn of industry until the present moment, is the record of the concentration of effort and the combination of productive capital. Coöperation, concentration, and combination—these are the results of competition."—"The Trusts," by William M. Collier, Chapter III.

While certain classes of the community are coming together and coöperating to produce larger results for the money, other classes are organizing to get more money for less effort.

Labor Unions.

Farmers' Coöperative Societies.

The objects of these two great movements are to control supply and advance prices.

Labor unions seek to fix wages, and control the hours and conditions of employment.

Farmers' coöperative societies seek to do the same thing—control, as far as possible, both the amount and the marketing of output with a view to getting better prices.

As between the two great coöperative movements A and B, the consumer—the man who pays the price—has less to fear from the former than the latter.

Partnerships, corporations, trusts, are all in the direction of more for less money; labor unions and farmers' organizations are all in the direction of less for more money.

IX

There is still a third class of associations springing up.

While the large corporation and the trust are the natural results of competitive conditions, each is simply a more powerful competitive unit; competition, if curtailed at all by the organization of a trust, is curtailed only for the time being, soon it is keener than ever, and consolidation may follow consolidation to lessen its disastrous effects, or producers, large and small, may form associations to control in a measure the competition, and these associations may attempt to do what labor unions and farmers' societies do—control outputs and fix prices.

We have, then, three well-defined coöperative movements:

1. *Consolidations*—partnerships, corporations, trusts—to more effectively compete by lowering costs and prices. *This is the only coöperative movement the direct object of which is to serve the consumer by giving him what he wants at lower prices,* though they may also be for the purpose of securing control temporarily and exacting for a time arbitrarily high prices.

2. *Unions* of labor and *unions* of farmers—to lessen competition and advance prices.

3. *Associations* of competing manufacturers and dealers to lessen competition and advance prices—to do exactly the things unions of labor and of farmers seek to do.

X

It is plain from the bare statement that *consolidations* (1) stand on a very different footing from *unions* (2) and *associations* (3). They have nothing in common with the latter; in fact, may be antagonistic to them.

A consolidation the prime object of which is to secure results at lower costs, naturally stands in opposition to organizations the object of which is to advance both costs and prices.

So long as the public demands quantity at a low cost it should promote the formation of large producing units, simply exercising such supervision over their operations that they will not be permitted to take advantage of any temporary monopoly to arbitrarily advance prices.

If, as is so commonly assumed in speech and print, the public were made up of buyers—i. e., consumers exclusively—then it should be friendly to (1) consolidations and opposed to unions (2) and associations (3), but the "pub-

lic" is made up of all these classes. Practically all men are both sellers and buyers, there is no buying class as distinguished from a selling, hence the interests of each particular individual are divided. One moment he is coöperating with others in his own line to get better prices from those to whom he sells, the next he is crying for laws to prohibit the coöperation of those from whom he buys; labor combines to get better wages from employers, but complains loudly if employers combine to get better prices; farmers combine to get better prices for cotton and wool, but complain loudly if the manufacturers to whom they sell combine to get better prices for cotton and woolen goods.

Labor and farmers have so many votes that their complaints are heard in legislatures, and laws are passed to prevent manufacturers and dealers from combining, and, at the same time, encourage labor unions and farmers' coöperative societies. These laws are so unfair, so unjust, so opposed to constitutional guaranties that they have given the courts much trouble; they are discussed more at length farther on.[1]

Few people realize the extent of the coöperative movement in this country, but there is not a branch of trade or industry that is not influenced in some degree by associations and organizations.

The country merchant buys a bill of goods; the labor that produced the goods is unionized; the manufacturers who shipped the goods are in a strong organization; the traveling salesman who made the sale is a member of an association; the railroads that carried the goods are all members of traffic associations that fix rates.

We are reciting facts:

Labor unions exist,
Employers' organizations exist,
Sellers' organizations exist,
Railway associations exist,

[1] See Chapter XIX.

and, under present conditions, the sole interest these organizations have in the ultimate consumer is to extract from him the highest possible price.

Viewed from the soil,

Farmers' coöperative societies exist,
Fruit and produce growers' associations exist,
Marketing organizations exist,

and the sole interest these organizations have in the customer is to make him pay as high a price as possible for the food he buys.

XI

The trouble with all these organizations is that each is founded upon a thoroughly selfish basis, each is concerned solely with getting as much as it can for itself.

Each union and association fights all the others to get a larger fractional share of the price the consumer pays:—the labor union fights for higher wages; the manufacturer's association fights labor and the railroads to retain higher profits; the railroads unite to fight both the others to get higher freight rates.

This condition cannot last, because it is not sound fundamentally.

The conflict between the organizations of the several classes, with its spirit of distrust and antagonism, is bad.

The periodical patching up of differences for the purpose of uniting and more effectually fleecing the consumer is worse.

The remedy lies not, as many urge, in the way of more drastic laws against combination, but in the development of more perfect coöperation—of coöperation along right lines, as distinguished from false, *of coöperation that takes in the consumer.* From the broad economic standpoint there is only one sound combination, and that is the combination of

the man who produces goods and the man who uses them; within this comprehensive coöperation there may be on both sides any number of lesser combinations, associations embracing this class and that, but all must lead to a common ground, an association—a coöperative movement—wherein the man who buys has just as much to say about both goods and prices as the man who sells; no other form of coöperation is destined to survive.

While this book, in using actual instances by way of illustration, will refer more often to certain large industries, it will be simply because the writer is personally more familiar with conditions in those industries, but there is not a proposition laid down that is not as applicable to the small industry—to the mechanic, to the tradesman, to the village merchant, to small lumber yard and coal dealer, to the farmer and the laborer, as to the large manufacturer and the big corporation. In fact, the large corporation, with its facilities for meeting and controlling competition, has less need for what is contained in this book than the small producer—save, as is undeniably true, that the large corporation stands in very great need of good advice and better methods if it is to gain public favor.

XII

There is a large movement under way to organize the retail trade of the country into local, state, and federal associations with a view to protecting the retail dealer from the disastrous effects of unfair competition and preserving for him the trade that he can economically serve.

Against the cry, "Eliminate the middleman," the middleman proposes to put up a struggle to justify his existence as an economic factor in distribution.

We speak of this movement in the retail world only

from hearsay, but have no hesitation in saying that its only chance for success depends upon:

Whether the middleman, the retail dealer, is a valuable economic factor;

And the extent to which consumers are taken into the proposed associations and convinced of their value.

An association of retail dealers in a given town should have on its executive committee (a) representatives of their employees duly named by the employees; (b) representatives of their customers, named in some open manner satisfactory to the buying public.

And to this body should be referred all differences arising between employees and employers, all differences arising between the dealers themselves, and all differences arising between dealers and buyers.

Such an association would have as its prime objects:

1. The enforcement by their own voluntary action of pure food laws, the use of correct weights and measures.
2. Sanitary and hygienic conditions.
3. Fair, frank, and straightforward competition.
4. Plainly marked prices, and one price to all.
5. Perfect frankness of statement regarding conditions under which goods are bought.
6. No sales below cost except under exceptional conditions.
7. No advertisements or statements that are not absolutely true.

If any tricky competitor refused to coöperate in such a program of frankness and publicity the law should permit the association to "list" such a man.

The term "black list" sounds formidable, and is not in good repute because "black lists" have been abused, but the "black list" is the only place for the "black-leg" trader, who is as great a menace to the consumer as to the honest dealer,

XIII

To the above program the average retail merchant will be quick to raise three objections:

First, to including his employees in the proposed association. "What's the use?" he will ask. At the foundation of this attitude is the old "Master and Servant" notion which is being so rapidly exploded that in not a few industries the "servants" have become masters and dictate conditions arbitrarily. The true relationship of joint interest is being recognized, and, if there is joint interest, there should be coöperation in all that has to do with the welfare of the business.

Second, the average man will object to including his customers in his deliberations regarding prices, but the customers are the parties vitally interested, they pay the prices, and it is as clear as the noon-day sun that, if they have no voice in the adjusting of prices, they will not be satisfied whether prices are low or high; they will welcome new competition, however unfair it may be, even though it demoralizes trade and is costly to the community in the long run. The great defect of combinations—of labor and employers both—in the past and at present is, that they ignore the man who pays the price they establish.

Third, while many merchants will agree to the one-price, plainly-marked policy, treating all customers alike, few will agree to make only true statements concerning their goods—in other words, each will wish to reserve the right to continue the *ancient trade practice of lying* to his customers and the public. In their announcements and advertisements merchants delight in saying they are selling "below cost"; the advertisement deceives only the gullible; sometimes they do have a "bargain day" and sell *some goods* at or below cost to create a run and sell other goods

at more than enough profit to make up the loss. All these practices are "tricks of the trade," devised to induce the public to do something it would not do under normal conditions; these tricks inure to the benefit of the sharp and unscrupulous dealer, especially to the dealer in second-rate and damaged goods, who rents a store for a week or a month, disposes of his inferior stock, and moves on before the public finds out it has been swindled. Rightly speaking, no man should be permitted to advertise or say that he is selling goods at cost unless it is true, or to say anything else to induce a customer to part with his money unless it is true, and an association such as described should make it its business to bring out the truth regarding every statement made in the trade, to establish the practice of telling things as they are.

CHAPTER V

BRUTAL COMPETITION

I

In a recent speech Senator La Follette said:

"An example of unfair and discriminatory prices is the practice so brutally employed by the Standard Oil Company of cutting prices in local markets invaded by small competitors while keeping up prices in other markets not so invaded. Another example is that of making a lower price to the purchaser who does not buy of a competitor than the price demanded if he buys also of a competitor."

Never mind the "Standard Oil Company" for the moment; in this connection it is only an epithet and epithets lead nowhere. The practices complained of are right or wrong irrespective of the parties who resort to them. Now, what are those practices in plain, un-Senatorial English?

1. That a manufacturer or wholesale dealer who finds a new competitor in a locality quoting low prices meets the local competition without reducing his prices in other places.

This practice was hoary with age before "'trusts" or corporations were dreamed of, it began with the beginning of trade and prevails in every country on the face of the globe.

2. That a manufacturer or wholesale dealer makes special terms to the customer who will agree to buy exclusively from him.

This, too, has been done from time immemorial and is the practice of every ordinarily keen manufacturer and jobber.

In short, the practices complained of are the very A, B, C, of the old competition, of that "free and unfettered" competition that the Sherman and state anti-trust laws are popularly supposed to protect and foster.

II

The smallest country dealer is quick to cut his prices on the appearance of a competitor and, if he can afford it, he will cut until he has driven the competitor from the field.

The peddler who tramps half a dozen villages will sell at cost or less than cost in one village to drive out a rival and recoup his loss by charging more for his wares in places where he has no competition.

The most insignificant jobber or manufacturer in Senator La Follette's own state of Wisconsin will gladly make a specially low price to the customer who will agree not to buy of a competitor, for that is the simplest way of securing a man's entire trade.

These things, which have been done the world over from the beginning of trade, strike the popular orator as "vicious" and "brutal" only when done by some very unpopular corporation.

To the small competitor who is ruined it does not matter much whether he is ruined by the Standard Oil Company, or by a mail-order house, or by a department store. And probably more small dealers are driven out of business every year by mail-order houses and department stores than the Standard Oil Company has ruined in its entire existence.

III

But the fact that practices condemned by Senator La Follette are both old and universal does not make them fair and just. When he calls them "brutal" he is right, but they are brutal whether practiced by the small dealer in a fight for custom or by the large corporation in a fight for trade; they are brutal because they are the methods of the fighter who is mercilessly trying to down his opponent; they are *brutal* because they are *natural, instinctive, elemental;* they are brutal because they are human, and *humanity in its struggle for existence is, and ever has been, brutal.*

Big corporations have not made these practices one whit more brutal, they have simply made them more conspicuous, thrown them into high relief, so that the people see and understand them better. What the individual has always done instinctively and viciously, the large corporation does systematically and indifferently.

A blacksmith borrows a little money and opens a shop in a country village. To get a start he shoes horses for a little less than the shop across the street. The established smith meets the new competition and goes it one better by cutting prices to cost, for the express purpose of driving out the new man. In a few months the new man is done for, closes up shop, and goes away "dead broke," whereupon the successful smith gets even by asking a little more than he did before, his charges being limited only by fear of inviting more competition.

That is the old, familiar, "cut-throat" competition in a nutshell.

When the individual crushes his rival by "brutal" methods the cry of the insignificant rival is too weak to be heard in Congress, but when the large corporation

crushes rivals in every state by precisely the same methods, the united cry is heard; there is no difference in the "brutality," but simply in the number affected, and numbers make all the difference in the world—about election time.

IV

But the question is broader than one of mere political or legislative, or even economic, expediency. It is a question of progress toward higher ideals in the industrial and commercial world, of the suppression of unfair, oppressive, "brutal" methods, in so far as it lies in the nature of man to suppress them. *It is the question of the substitution of a new competition for the old.*

It is conceivable that the time may come when even the individual—the village blacksmith—will feel that there should be, must be, some better way of dealing with a rival across the street than ruining him; but before the individual attains a moral and economic outlook so broad as that the world will have to progress far beyond its present commercial creed. Oddly enough, it is far easier to induce large producers and large corporations to make experiments along the new lines; they realize the folly of the methods of the old competition and are only too glad to try the new, to try any kind of coöperation the law will permit.

V

When one looks back with dispassionate eye over the last fifteen years—fifteen years of unparalleled financial, commercial and industrial turmoil and upheaval, the conclusion is inevitable that whatever there has been of progress in the world of trade and industry toward higher

ideals, toward franker and more straightforward methods, has been due directly or indirectly to the development and operations of large corporations, the so-called "trusts." They devised nothing new in "brutal" trade methods, but they have done things on such a large scale that the public begins to see and understand the unfairness, the oppressiveness, of common, every-day trade customs. The large corporation has been a wonderful magnifying mirror in which the people for the first time see—*themselves;* it has set the entire legislative, executive, and judicial world groping for remedies for economic ills that have their roots in the selfishness of the individual. Senator La Follette thinks he is after the Standard Oil Company, the Steel Corporation, the large—and friendless—combination. He will find in the end he is prodding the small manufacturer and jobber in his own state, for they are guilty of the same "brutal" practices, only on a lesser scale.

A senator who is also a scholarly writer, in an interesting book[1] says:

"If a large combination can produce and sell articles at a less price than its competitors, and employs no unfair methods against them, is not the public benefited rather than injured?"

The question, of course, carries the assumption that the large combination does undersell its competitors, and that involves the elimination of some or all of the competitors.

What consolation is it to the bankrupt competitor to be assured he was disposed of gracefully and honorably, that no unfair means were used to effect his suppression? Might he not reply:

"What do I care about your motive? You undersold me and put me out of business—that's all there is to it."

As a matter of fact the public may be a very great

[1] "Corporations and the State," by Senator Theodore E. Burton, of Ohio.

loser in the long run by getting goods for a time so cheap from one or a few large producers that small ones cannot exist and, though the elimination of competition by unfair and oppressive means is wrong—mainly as between the parties immediately concerned—the economic effect on the community is very much the same when the competition is suppressed by fair means; *the net result is the disappearance of the small competitor.*

VI

Senator La Follette need not have stopped with two instances of "brutal" competition, above all with two that are almost innocuous as compared with others that are incomparably more unfair.

For instance a manufacturer sells a retail merchant a stock of goods sufficient to last six months. The next day or week the same manufacturer sells a rival merchant in the same town similar goods for enough less to enable the second merchant to make a profit at the first one's cost.

Or, a manufacturer sells a retailer a six months' stock and then sells the customer of the retailer at either the same prices or at prices so close the retailer is unable to dispose of his stock except at a loss.

These two abuses are so common there is not a trade free from them, nor a town in the country where dealers are not to be found who have been victimized.

The middleman may be an evil, a superfluous luxury, and it may be he is destined to be eliminated, but, whatever fate is in store for him, there is no reason why he should be ruined by practices that are so unfair no one would think of defending them.

Every producer has the right to sell direct to the consumer, or to the trade, or to both so long as he does so on

terms that are open and aboveboard and not unfair to either, but no producer has the right to sell to the trade and the consumer without informing both of his intentions and his terms so that both may buy with full knowledge, and when terms are announced and prices made to both, no producer has either the *moral* or the *economic* right to arbitrarily change them to the detriment of either class of buyers.

VII

Another illustration: the glib agent of some concern that makes an attractive special line of goods visits one village after another and persuades a local dealer in each place to buy a large stock under the promise he will have the exclusive sale. A few weeks later, and long before the dealer has disposed of his stock, he finds others selling the same articles in the territory for less money. The others may or may not have secured their stocks direct from the maker, but they have them, the maker has taken no steps to protect those who bought in good faith and in the end they are losers.

Some of these practices are so glaringly wrong the law reaches them, but for the most part the law is unable to lay its hand upon any breach of contract or wrong that it can remedy; the individual who invested perhaps all his money upon the glowing assurance he would make some money is helpless.

The big lumber company "loads up" retail yards in a number of towns, then sells direct to carpenters and builders in the same towns thereby making it impossible for the dealers to sell their stocks except at losses.

A manufacturer sells a line of highly advertised specialties to dealers all over the country, suddenly these dealers find department stores and mail-order houses selling

the same articles at less than they, the dealers, paid. One of two things has happened—either the manufacturer has sold the department stores and mail-order houses the goods at lower prices than he sold the regular trade, or the department stores and mail-order houses are selling the goods below cost as an advertisement.

Both these things happen daily. Department stores and mail-order houses resort to every expedient to get standard and highly-advertised specialties for the express purpose of cutting prices. They offer manufacturers all sorts of inducements, tempt them with offers of orders far beyond those received from the regular trade, and many a manufacturer is weak enough to yield, even though he knows the department store and mail-order house will immediately cut the retail price and make it impossible for other dealers to dispose of their stocks at a profit.

If the manufacturer does not yield the mail-order house will often list the goods at a cut price just the same, and when an order comes in go out and buy the article from the regular trade at the regular retail price and fill the order at a loss.

A well-known camera is not sold to mail-order houses under any circumstances, nevertheless it is listed by them and serves to make their printed lists more attractive. When an order comes in the effort is first made to induce the customer to take instead another camera "just as good," the sale of which the house controls and on which it makes a profit. If the customer insists, the house sends out to a regular dealer, pays the regular retail price and delivers the camera at a loss.

"Poor business," some one exclaims.

Not at all, it is one of the "shrewd" and "cunning" forms of competition. It is fair to neither the trade nor the public.

"But the customer gets his camera at a lower price."

While fifty other customers are persuaded to take the "just as good" cameras at prices out of all proportion to their real value.

The one customer who insists may flatter himself he gets a standard article at less than the regular prices, but it goes without saying no mail-order house would sell one thing at a loss if it could not more than make up in other directions. In the end the public pays and pays well, as the annual statements of the big houses show.

VIII

Both department stores and mail-order houses have their places in the economy of distribution; it is even argued they are destined to supplant the retail dealer entirely and in the end largely reduce the cost of handling from producer to consumer, all of which may or may not be true.

The point here is that the competition described is indefensible from any point of view.

As an economic proposition no store—whether department, mail order, or retail—should be permitted to sell any undamaged article below cost for the purpose of attracting custom, for the purpose of getting the trade of others, or of inducing the public to buy things it does not want; the practice is a vicious one and contributes its share toward "the high cost of living," for *the cost of living depends not so much upon what we pay as upon what we buy.*

From time immemorial "trade" has been synonymous with trickery, and in many countries the "trader" is of doubtful social standing.

It would be easy to fill a small volume with accounts of "tricks of the trade," of habits, customs, practices, petty

frauds, deceits, of over-reaching and cheating reduced to a fine art, but all each reader has to do is to appeal to his own experiences from childhood up—a life-time of conflict of wits against wits in a game the rules of which have been exceedingly lax.

But the signs of change are numerous and significant.

IX

How far and how rapidly the country has drifted from the fundamental propositions of the old competition is indicated in the terms of a decree entered last October in the Circuit Court of the United States at Cleveland, the case of the United States vs. General Electric Company, and other makers of electric lamps.

An important point concerning the decree is that it was not the decision of the judge interposed between contending parties, but the defendants withdrew opposition and agreed to a decree satisfactory to the Government and the Court. It marks a meeting of contending minds upon certain propositions that are as vital to the new competition as they are fatal to the old.

X

The crucial propositions are as follows:

1. *"The defendants and each of them are enjoined from making any contracts with parties from whom they purchase supplies and machinery used in the lamp business, whereby such parties shall bind themselves not to sell such supplies and machinery to other parties, or whereby such parties obligate themselves to sell to defendants at different prices than they sell to other customers."*

It will be observed that the injunction runs not only

against the combination of defendants, but against *the liberty of each* to do things that have been done from time immemorial under the old competition. In fact, until recent years no one has thought of questioning the right, moral and legal, of a group of manufacturers to take the output of a given maker of either the machinery they need or the raw material they use. But whatever may be said of the right of a combination to do this no one has dreamed of denying the right of the individual—person or corporation—to make a bargain with a manufacturer for his entire output, or for a large percentage of it, at a certain figure, providing the manufacturer would agree to sell to no other at so low a price. That is the very essence of innumerable contracts entered into daily between jobbers and manufacturers.

It is a part of the old creed that a man has the right to sell his goods to whom he pleases, at the prices he pleases, on the terms he pleases; that he can sell the bulk of his output to one customer at a special price and agree not to sell the balance at less than a certain per cent. higher; that he can sell a part of his output to one purchaser and agree to sell to no other purchaser in the same locality; that he can build up the business of a customer one year by giving him low prices, and ruin him the next by refusing to sell to him at any price; in short, that he can use his own judgment or whim in making prices and in disposing of his product.

Such are some of the sacred tenets of the old competition; the decree makes sad havoc of these notions.

XI

2. *"Defendants and each of them are enjoined from entering into any contract with dealers or consumers who*

buy certain improved filament lamps whereby such dealers or consumers must purchase all the ordinary filament lamps they need as a condition to obtaining the improved; nor can any one of the defendants discriminate against any dealer or consumer who wishes to purchase improved filament lamps because such dealer or consumer buys either ordinary lamps or other improved filament lamps from other dealers."

What has become of the good, old-fashioned belief that a man who has an improved or patented article may use it as a lever to force the sale of his ordinary line?

If an electric lamp manufacturer has an improved filament lamp, either patented or of secret process, why may he not say to a dealer or a consumer, "I am under no obligation to sell you my improved lamp. If I do sell to you it will be at my price and on my terms, and the first condition is that you buy of me all the lamps of all kinds that you sell"?

Up to the entering of the decree who would have believed it possible that any court would intervene and say the manufacturer could not make such a contract?

The decree does not say that the individual may not refuse to sell at all; it says that he may not refuse on the ground that the dealer or consumer is also purchasing elsewhere. The loop-hole for evasion may be large, but the intent of the Court is plain—it is to give the customer the widest possible latitude in purchasing and to take from the seller the right to lay down conditions that will tend to hold the customer.

If there were any possible doubt about the intention of the Court it is dissipated by the following language: "The defendants and each of them are perpetually enjoined from utilizing any patents which they have or claim to have or which they may hereafter acquire or claim to have acquired, as a means of controlling the manufacture or sale

of any type or types of lamps not protected by lawful patents."

Apply that, say, to the maker of a razor that is patented, who also makes a line of razors that are not patented; according to old-time notions he could sell all or any of his goods to any one willing to buy, or he could refuse to sell with or without a reason, or he could say, "I won't sell you my patented razors unless you buy from me all the barber's supplies you need."

Under the new theory he may be enjoined from "utilizing" his patented razor as a means to force the sale of his supplies and unpatented articles.

To be sure, this particular decree does not go so far as to lay down the corollary of its proposition, namely: that any party desiring the patented article shall have the right to come into court and compel the maker to sell it to him at a reasonable price; but logically that right is implied in the proposition that no maker shall refuse to sell for a particular reason, since, as already suggested, he may refuse and give no reason. As the matter now stands the aggrieved buyer of electric lamps can bring these particular defendants into court only when they refuse to sell and give a bad reason for refusing to sell, to wit: the reason the court holds objectionable.

XII

3. *"The defendants and each of them are enjoined from offering or making more favorable prices or terms of sale for incandescent electric lamps to the customers of any rival manufacturer or manufacturers than it at the same time offers or makes to its established trade where the purpose is to drive out of business such rival manufacturer or manufacturers * * * provided that no de-*

fendant is enjoined or restrained from making any prices for incandescent electric lamps to meet, or compete with, prices previously made by any other defendant, or by rival manufacturers."

The very essence of the old competition, the competition that the public thinks the law is trying to protect, is the freedom to undersell, freedom to sell at cost, at less than cost, at any price at all, or to give away goods, to down a competitor. That has been the one resource of the old established house to protect itself against the aggressive new comer; it has been the right of the new comer in his fight for a share of the trade.

XIII

It is the theory of the *old competition* that the consumer, and inferentially the public, profits from this *warfare.*

It is the theory of the *new competition* that in the long run *neither the customer nor the public profits from conditions that mean disaster to individuals.* In a sense, therefore, the very unusual provisions of the decree are along the new lines but they are unconsciously so, and therefore uncertain in their general application, however pertinent to the facts of that particular case.

In its general application the decree overturns the theory of the old competition; it limits a man's right to sell what he owns to whom he pleases on such terms as he pleases. It says, in so many words, that in all he does he must consider his rival—that is the striking novelty of the decision.

The theory of the decree is, that whereas under the old competition A was free to sell to B on such terms as B was willing to accept, *under the new, the interests of C must be considered;* if the bargain between A and B in-

jures C it is no longer legal, even though C has in the transaction only the indirect interest of a competitor.

This regard for the interest of C is a legitimate economic interest. It is more, it is an ethical interest that the old competition ignored. In a crude way, courts are coming to realize this broader interest; coming to understand that commercial fights, like cock fights and prize fights, are far behind present day standards; that nothing is gained by encouraging two manufacturers to fight one another until both are bankrupt.

XIV

Legislatures still cry out: "Go at it! Hands off! Let 'em fight it out!" and if the two combatants show signs of making up their quarrels, of getting together in a friendly way, a large majority of legislators, state and national, raise a cry of angry protest—the fight must be to a finish.

What will the radical upholders of the Sherman law say to a court decree which commands a manufacturer *not* to compete with a rival by underselling him?

The decree is crude in that it attempts too much and accomplishes too little. For instance, each of the defendants is ordered not to undersell a rival "where the purpose is to drive out of business such rival." Who is to determine the seller's purpose? By the terms of the decree he may undersell a rival until the latter has no customers and necessarily goes out of business, and each transaction will be right and proper providing at no time can it be proved that there was an intention to eliminate the unfortunate competitor. On its face the decree does not pretend to restrain a man from going after all the business he can get, even to the getting of all there is, but he must do it politely and with no provable intent to injure those he gently elbows off the earth.

Furthermore, suppose the new rival—who, by the way, is not restrained in his actions by the decree—in the spirit of the old competition "goes after the business" and, to get a foothold, makes "any old price," what are the defendants to do? Assume that this particular rival is making serious inroads, that he is quoting cost and below cost, or that he has an improved lamp that he can sell for less than the cost of other lamps and yet make money.

There are but two things for an older company to do: either make terms with the rival or fight. To make terms whereby prices are fixed or territory apportioned is a suppression of competition and illegal; to fight by engaging in a trade war, by going out and underselling in the rival's territory, for the express purpose of suppressing him, is contrary to the decree, though such a course is instinctive and natural and is the old competition in its most familiar form.

XV

Texas has a law that provides: if any person engaged in the manufacture or sale of any article of commerce or consumption shall, with the intent of driving out competition, or for the purpose of financially injuring competitors, sell within this state at less than cost of manufacture or production, or sell in such a way, or give away within this state, their products for the purpose of driving out competition or financially injuring competitors engaged in a similar business, said person, resorting to this method of securing a monopoly within this state in such business, shall be deemed guilty of a conspiracy.[1]

[1] "Contracts entered into for the purpose of creating an agency whereby the agent is to sell the goods of the principal as its agent do not come within the terms of the anti-trust act; but contracts regulating and controlling the purchase and sale of goods whereby parties are given exclusive right to handle the goods in question do come within the statute."

This statute recognizes broadly certain propositions that are fundamental to the new competition:

1. No man has the right to give away goods to injure competitors.

2. No man has the right to sell goods at less than cost to injure competitors.

3. No man has the right to sell goods "in such a way" as will injure competitors.

Under the old competition it is considered not only legitimate but cunning and commendable to do all these things.

And furthermore if any association of manufacturers, engaged in interstate commerce, should *agree among themselves* not to do the things forbidden by the Texas statutes—in short, *to obey* that law—*they would be liable to prosecution and imprisonment under the Sherman Act*—such is the delightful confusion of our laws upon the subject.

XVI

Massachusetts has a statute which makes it a criminal offense for any person or corporation to "make it a condition of the sale of goods, wares, or merchandise, that the purchaser shall not deal in the goods, wares, or merchandise of any other person, firm, or corporation."

The agent of a tobacco company sold goods to a dealer with the agreement that if he bought only the tobacco company's goods a rebate of 6 per cent. would be allowed.

The Supreme Court of Massachusetts held the statute constitutional and sustained the conviction of the agent of the company, saying, *"It is intended to make it impossible for a seller to say to an ordinary purchaser who buys to sell again, 'You cannot buy my goods except on condition that you will not sell goods obtained from others. If*

you sell like goods manufactured by others you cannot have mine.' "[1]

And the court very rightly remarks, "There is no doubt that the statute puts a limitation upon the general right to make contracts," but justifies it as an attempt to meet modern conditions.

When a similar contract made by the same tobacco company was presented to the Federal Circuit of Appeals in St. Louis the three judges—one of whom, Judge Van Devanter, is now a Justice of the Supreme Court—held that the right of the tobacco company to dictate the terms upon which it will dispose of its products *"is indispensable to the very existence of competition. Strike down, or stipulate away that right, and competition is not only restricted but destroyed."* [2]

That which is forbidden by decree of court in Ohio, and is a crime in Massachusetts and Texas, is legitimate business practice in Missouri.

What is the trouble?

Nothing but the conflict that is now on between the Old competition and the New; the old finds expression in the judgment and opinion of the court in St. Louis; the new finds utterance—not as clear and logical as might be—in the decree of the court in Cleveland and in the judgment and opinion of the Supreme Court of Massachusetts and in the laws of that state and Texas.

XVII

Iowa and Minnesota have statutes making it a criminal offense to sell a commodity at a lower price in one locality than is charged in another.

Nebraska has a statute prohibiting the reduction of

[1] Commonwealth *vs.* Strauss, Mass., 74 N. E. Rep. 308.
[2] Whitwell *vs.* Continental Tobacco Co., 125 Fed. Rep. 454.

price of a commodity in general use in any particular locality for the purpose of destroying the business of a competitor in such locality, also forbidding discrimination between different sections, communities or cities.

In upholding the constitutionality of this law the Supreme Court of Nebraska[1] said:

"When we take into consideration that it is not the act itself, but the act coupled with the purpose of destroying the business and property of others, which is declared criminal, we find little trouble in arriving at the conclusion that the statute is within the power of the legislature and is, therefore, valid."

South Dakota has a statute to substantially the same effect: it provides "that any person, firm, or corporation doing business in the state, and engaged in the production, etc., of any commodity in general use, that intentionally, for the purpose of destroying competition of any regular established dealer in the commodity, or to prevent competition of any person who, in good faith, intends and attempts to become such dealer, shall discriminate between different sections of the state by selling such commodity at a lower rate in one section than in another section, etc., shall be deemed guilty of unfair discrimination."

In a case[2] wherein a lumber company that maintained a chain of lumber yards in several localities was charged with selling lumber in one locality at a lower price than in another for the purpose of driving out a competitor, the Supreme Court sustained the conviction.

The court said:

"The statutes of most states, up to very recent years, were aimed only at monopolies brought about through combinations, so that, in treating of the subject of monopoly, both text-book writers and judges have spoken of them

[1] State *vs.* Drayton, 82 Neb. 254.
[2] State *vs.* Central Lumber Co., 24 So. Dak. 136.

as though monopoly and combination were one and the same, thus causing many to consider that there could be no monopoly except there was combination, while, as a matter of fact, combination is simply a means, and but one of the many means, by which a monopoly is acquired; monopoly being the end sought, combination a means therefor.

"To get rid of competition, and thus acquire a monopoly, the man, firm or corporation possessed of, or controlling, large capital no longer said to his competitor: 'Let us combine, and thus obtain a monopoly of the business we are engaged in, and by so doing increase our profits by raising prices to the consumer.' No, that would be criminal, and might lead to trouble, and, too, it was a crude way of acquiring the thing sought. Now he says to a competitor, if such competitor be weaker than he: 'Get out of my way. Sell me your business, or I will destroy it by unfair competition.'—or, in many cases, without giving his victim a chance to sell to him the business he has, he sets about destroying it, and by a method as certain as the passing of time, a method that need bring to him not even an immediate financial loss. He puts the price of the commodity handled so low at the point where his victim is in business as to make it impossible to meet such price except at a loss, and, to offset what loss he suffers at that point, he raises prices at one or more other points. As soon as this practice became quite prevalent, the public realized that an old evil was being brought upon them by a new method; a method that not only tended as its natural and necessary result to place a monopoly into the hands of the strong, but did not, as before, permit the competitor to share in the fruits of the wrong—an evil bringing loss to the public and wrong and injustice to the weak tradesman. *Again human experience, recognizing the laws of God and nature, controlled and guided by an aroused public conscience, evolved a new law, and placed it upon the statute books of this and many other states, a law aimed at monopolies obtained through unfair competition.*" [1]

[1] This opinion is interesting reading in connection with Chapter XVII.

XVIII

The plain truth is that the very theory of the old competition, free and unfettered individualism, has received its severest blows at the hands of its professed friends. In curtailing the liberty of the "trust," the liberty of the lesser corporation, of the partnership and of the individual, disappears; what is unconscionable for one is unconscionable for another. The "brutality" of a given act does not depend upon the size of the trust that commits it; it depends upon conditions as they exist between the parties to the act; and there may be—usually is—far more of viciousness in the conduct of an individual toward his competitor.

It goes without saying that courts cannot intervene and regulate all the large corporations of the country, to say nothing of large manufacturers and dealers that are not corporations. That being true, why should not competitors be permitted to get together voluntarily and adopt rules for the regulation of competition along the lines laid down in the cases and statutes referred to?

Voluntary coöperation with a minimum of state supervision is far better than compulsory action with a maximum of supervision. In the present uncertain state of the law the attitude of Congress would seem to be that of forbidding the voluntary association that is absolutely necessary to eliminate those "brutal" features of competition the courts and Senator La Follette agree must be eliminated.

CHAPTER VI

TRUE VS. FALSE COMPETITION

I

"Then your argument is that all competition should be suppressed?" someone says.

"No."

"But if competition is war——"

"Yes."

"And war is ——"

"Yes."

"Should not men stop competing?"

"In a *false* way, yes; in a *true* way, no."

"What do you mean?"

"We will see."

II

Two runners engage in a race. The distance is a mile. They start, side by side, at the crack of a pistol. They do not start at top speed but reserve their strength. They keep close together and each gages his efforts by what the other is doing. For nearly the entire distance they may run shoulder to shoulder, neither leading, or one may set the pace, the other following close at his heels. At the finish there is a spurt and it often happens the race is won, not by the one who can actually run faster for the entire distance, but by the man who has used the better judgment

and husbanded his resources for the final dash, surprising his opponent.

Or, a strong runner may take it easy and win without being obliged to exhaust all his energy. It is all a matter of knowledge of past performances, watchfulness during the contest and the exercise of good judgment at each stage of the race.

In such a race the *competition* is *keen, real,* and *beneficial.*

Suppose, however, the two runners, instead of running on the same track where each may know what the other is doing and govern himself accordingly, are started on separate tracks. Each knows he is to run a mile against the other, but as neither can see what the other is doing, the only prudent thing is for each to run the entire distance as fast as he can, to run to the point of exhaustion.

In such a race there is no real, *no true competition.* The runners are not competing one against the other, but each is running against himself, doing the best he can regardless. At the end when records are compared they find that both expended a large amount of energy needlessly—the winner in running faster than necessary, the loser in making a hopeless contest.

To make the point still clearer—suppose the two runners start at the same moment on the same track as under the first hypothesis and for the first half they are side by side and the competition is real and keen. At the end of the half mile the track divides, the diverging lines are separated by a barrier so high neither runner can know what the other is doing. What is the inevitable result? From the moment they lose sight of one another all real competition ceases, each man puts forth all his strength and runs until he collapses. That is *false* or *pseudo* competition.

A man may run against time, jump to beat a record,

play golf against Col. Bogey, but all such attempts are called competition only by courtesy. They lack the vital, the stimulating elements of knowledge against knowledge, strength against strength—of man against man—that make real competition, competition that is worth while to those who compete and to those who look on—to competitors and public.

III

From the foregoing it follows that *true competition* exists only where

(A) There are two or more competitors,

(B) Competing under conditions that enable each to know and fairly judge what the others are doing.

The essence of competition lies in the element of *knowledge,* it is real, true, and beneficial in proportion to its *openness* and *frankness,* its *freedom from secrecy and underhand methods.*

IV

A carpenter in a small town is asked to make a bid on a piece of work. The owner says he intends to get other bids and will let the work to the lowest; as a matter of fact he may have no intention of asking for additional bids. To get the lowest possible figure the carpenter is led to believe he is competing with others; he is in the position of a runner in a walled track who is falsely told some one is running against him in an adjoining track.

The carpenter needs the work, he labors over his estimate, he makes a figure so close to cost there is barely a living wage in it.

What happens? The tricky owner looks at the bid, and shakes his head. "Too bad, you're too high." The poor

man is crestfallen. "I—I figured it as low as I could and do it right."

After a few more discouraging remarks and references to other and lower offers, the owner says magnanimously, "I'll tell you what I will do, if you'll throw off fifty dollars, the job is yours."

There is no use protesting; the shadow of the unknown quantity, of the other fellow whose figure is a "little under," is over the whole affair; the man is helpless, he has no means of ascertaining the truth of the owner's statement, he is on a footing of jealous distrust with the other carpenters in the village, he would not think of asking them, he takes the contract, does an honest piece of work and comes out a loser.

Is there any real, any true competition in that transaction? None at all—only *false* or *pseudo* competition.

The one bidder—like the one runner—thinks he is competing with others; the owner knows he is not.

"But," says the man in the street, "it was the possibility other competitors might bid that made the price so low."

No, the figure bid was based upon the man's own necessities; if he had not been in desperate need of work he would not have made that final reduction which occasioned the loss.

The public is saturated with the notion that potential competition is true competition, that competition, like bogey men, should be present in the dark to frighten prices down, that anything like friendly intercourse between competitors is a step toward the suppression of competition and reprehensible. Potential competition is competition, but it is *not true* competition; it is *false* competition of the most demoralizing nature.

But suppose the owner does get estimates from other carpenters, the situation remains unchanged; each carpenter prepares his estimate under precisely the same condi-

tions of secrecy and jealous distrust, and the bid of each is based upon his own needs; if he has considerable work in hand he names an arbitrarily high figure on the long chance he may get it; if he is badly in need of work he names an absurdly low price to the detriment of himself and his creditors—in either case there is no true, healthful competition.

V

It is this false or pseudo competition that prevails in the contracting and manufacturing world.

It does not prevail in those sections of the labor world controlled by unions. The unions fix and make known rates of wages and conditions of employment. It is only with unorganized labor that the employer is able to say truthfully or untruthfully "You ask too much, I can hire any number of men as good as you for less."

But even with unorganized labor the prevailing scale of wages in any given employment is soon known. A man may go to work for two dollars a day but if he learns that others doing the same work get two and a half, he soon demands more or quits. Employment bureaus, even those run by unscrupulous proprietors, are so many effective agencies for the dissemination of knowledge regarding work and wages. It is impossible to employ a cook or a maid at less than the prevailing wage. Unhappily, a poor cook asks and gets as much as a good, not because she is worth it, but because she has been told what others get and will not work for less.

In the labor world, organized and unorganized, wages do not fluctuate greatly. There may be a general and steady advance as of recent years or slight recessions from time to time, but there are no violent fluctuations.

Twenty-five per cent. of the labor employed in a given

industry may be laid off without wages dropping one per cent. The period of depression must be very prolonged and very severe to materially affect the rate paid those who are kept at work; they will consent to work for less hours per week before they will accept a less sum per hour; while the unemployed, however desperate their condition, are loath to offer to work for less than what they formerly received.

These conditions show how much better informed and better fortified certain sections of the labor world are when it comes to competition than are contractors and manufacturers.

The contractor has no union, no employment bureau to which he can appeal for information before he makes a contract. He is obliged to make his offer in the dark and when it is accepted he is bound to do the work though it ruin him; he cannot demand more or quit. When he finds he was deceived regarding the bids of other contractors and that they are getting more for similar work and possibly from the same owner, he must stand by his contract.

VI

Between the blacksmiths of a small village the competition may be more real, it may be so open, so true that the charge for shoeing a horse is practically fixed.

Why should a false and vicious competition prevail among carpenters and a truer form among horseshoers?

The answer is found in the conditions under which each class does business.

The carpenter bids on jobs no two of which are alike and each bids with reference to his own particular needs and with little or no knowledge regarding the bids of others.

The horse-shoer has his shop to which his customers must come, it is open to the street, his competitor can see who the customers are and the amount of work he is doing.

While waiting for his horse to be shod a farmer may drop into the other shop just to see whether charges are lower or work better.

The competition is so open that every blacksmith in the place is afraid to cut either his own or a competitor's charge. If he cuts a competitor's his action will be known so quickly he will reap no advantage; if he cuts his own price of the day before, his customers will hear of it immediately and those who were overcharged will resent it and those he favors will distrust him.

The only safe course is to do as retail merchants do, treat all alike, charge a fair price and a price that is known to everybody, deal with customers so frankly and openly that they know they are in good hands—the man who does this may get even higher prices for his work than the shifty competitor who works for less but who in his short-sighted efforts to get trade, makes different charges to different customers.

True competition begins with the development of conditions that tend to eliminate secrecy in bidding and charging.

It is not that horse-shoers are better or more forbearing than carpenters; on the contrary, they are, as a class, far more pugnacious, far more prone to "down" the other fellow if they can, but conditions compel them to work in the open, experience teaches them the commercial advantage of keeping track of what others in their trade are doing and charging; that is the first inquiry a new man would make; before opening a shop he would go around, take a good look at shops already doing business and find out all he could about them. In the light of the information so

gathered, he would have to decide, first, whether the volume of business warranted another shop; secondly, whether to get the business it would be necessary to cut the prevailing schedule of charges.

In just the proportion that all this information is available, is the competition real and intelligent. When one man knows what another is doing he is in a position to compete with him; when he does not know, the competition, so-called, is mere *blind rivalry* wherein both may ruin themselves to the detriment, in the long run, of both customers and the public.

VII

What is true in the letting of small contracts to masons, carpenters, painters, and all other trades, is equally true in the letting of large.

A railroad is in need of a crane. It requests bids of a number of crane builders, fixing a day and hour by which the bids must be delivered at the office of the purchasing agent.

The several companies are located in different cities in different states; they have no connection and no communication one with another; each is a jealous and independent unit. According to popular notions the competition is ideal—it is the familiar "cut-throat" variety. At the hour named sealed bids are handed in, but the work is seldom let in good faith to the lowest bidder. The filing of the bids is but the dealing of the cards in a game wherein the purchasing agent is given five aces; he takes the bids, compares them, and three times out of five, begins more or less secret negotiations with one or more of the bidders to secure reductions. Favored bidders are told what others have bid, or a bidder is sent for and told, "If you will

knock off $500 I will give you the contract right here and now."

It is the offer of the contract then and there that is so effective; few salesmen for companies in need of work can resist the "take it or leave it" threat.

The president of a large manufacturing company said: "When I need a crane I write for bids; when the bids come in I send for the representatives of the companies whose cranes I am willing to use. I put one man in one room, the other in another where they can't get at each other, then I go from one to the other, giving each a chance to underbid the other, but I do not name any figures. All I have to say is, 'Well, have you any other offer to make?' and each will cut his price again and again, sometimes when he is already low."

The result of this bidding in the dark is that the purchaser gets a crane for less than it is really worth, often—in dull times—for less than cost; the men who use the crane get a piece of machinery that has been cut and pared until the margin of safety is reduced to the danger line—no one has profited by the transaction.

In all respects the letting of the crane contract parallels the letting of the carpenter's job—the same secrecy, the same distrust, the same ignorance, the same playing into the hands of purchasers quick to take advantage, the same wide differences in prices—differences that alone prove absence of true competition.

VIII

The point is made that a wide difference in bids on work of standard character demonstrates the lack of true competition. Given a piece of work that presents no unusual features and it goes without saying that ten intelligent contractors would come to substantial agreement about its

cost if they conferred together and compared data; their bids would not vary greatly in true competition and such differences as there were would be normal, easily explained and justified. But where two bidders vary so widely in their figures that each looks upon the other as "wild" in his estimates, something is wrong, either the one is too high or the other too low, the intelligent bidder in between is the sufferer.

In false competition the honest and intelligent bidder is always at a disadvantage when there is little demand for work. When there is more than enough work for all it does not matter so much what the ignorant bidder may do; he may bid high and make more than he should, or he may bid low and lose money, the intelligent bidder pursues the even tenor of his way, knowing his costs he makes sure of a fair profit on each contract taken.

It is in the dull times that the intelligent bidder feels the competition of ignorance and unscrupulousness. He is caught between two fires, that of the man who does not know his costs, and bids recklessly in the dark, and the man who knows his business, but bids low, with the intention of working out a profit in some tricky way—of the two the ignorant bidder is the more troublesome factor, his competition is disastrous because blind and reckless.

IX

In transactions such as those outlined, the factors of true competition are present—(a) *work to do;* and (b) *a number of parties able and anxious to do it;* but some element is lacking, some element the presence of which would transform the false and vicious competition into true and healthful. That element is *knowledge,* such knowledge of conditions and considerations affecting the price of the

work as would place all bidders on a footing of something like equality in the preparation of their estimates.

In proportion to the fullness and accuracy of such knowledge is the competition keen, intelligent, and beneficial to bidders, purchasers and the community. To precisely the extent that ignorance, jealousy, deceit prevail is the competition apparent rather than real, disastrous rather than beneficial.

X

As a further step toward ascertaining what true competition is, as distinguished from false, carry the illustration to the other extreme.

Suppose the bidders get together and agree upon the price all shall bid, or agree that one shall have the work, the others to either refrain from bidding or put in "protecting" bids. Competition is *suppressed;* the agreements are illegal.

Between the two extremes of bidding in the dark as individuals, without coöperation—*false competition,* and bidding in combination an agreed price, *suppressed competition*—must be found the conditions favoring *true competition.*

Under *false* competition the purchaser has every advantage over bidders in the dark; under *suppressed* competition the bidders in combination have every advantage over the purchaser who is in the dark; under *true* competition both deal frankly in the open on a footing of equality.

To return to the illustration first used: it is the best informed blacksmith, carpenter or painter who gets the trade in good times because he keeps in touch with what is going on, with what his competitors are doing and charging, so that by reason of his knowledge he is in a position

to really compete with them, to take the work he wants at the price he wants. It is the man who stays within the four walls of his shop, who fails to keep his ears and eyes open, who asks no questions and gives no information, who bids in the dark, that goes to the wall, or, at best, makes a precarious living; every country town can show plenty of such men, silent and envious, melancholy relics of the old order of things.

CHAPTER VII

THE OLD COMPETITION

I

Under existing conditions practically all bids upon contract work fall into two classes:

A. Collusive—*suppressed* competition.

B. Secret—*false* competition.

In neither case is there any true competition.

Where bidders conspire together and agree upon their bids either for the purpose of exacting an arbitrarily high price, or with a view to throwing the work to some one bidder, at such price as he wishes to charge, the result is the same—suppression of competition.

If bidders do not conspire together, but each prepares his bid independently and submits it sealed, there is still no real competition; each bidder bids against his own fears and necessities.

The purchaser who opens the bids has little difficulty in determining whether he is confronted by suppressed competition or false. If suppressed, the bids will be suspiciously alike; while if the competition is of the pseudo variety the bids will be characterized by spreads that are ridiculous.

As a matter of fact, there is comparatively little collusive bidding. Collusion calls for a large degree of confidence in one another on the part of the bidders, and it is a familiar fact that no sooner do men come together in

agreements to suppress competition than the very act of conspiring tends to destroy the little confidence that may have existed. Collusion begets distrust. As a body of keen competitors once said: "We no sooner combine and agree upon prices than it is a race to the telephone to see who can book orders first at prices a little under those fixed."

Attempts are made to give force to these combinations by depositing large amounts to be forfeited in case of cutting, but these penalties are altogether ineffectual.

Now and then one hears of a "pool," or combination, an association in some particular trade or industry that is effective and that has existed for many years, but these instances are few indeed in comparison with the number of lines wholly uncontrolled, and where combinations are successful in maintaining uniform prices, the interest of the customer is considered and no advantage taken.

II

The writer has in mind a class of machinery, the prices of which for many years have been established by joint action at the beginning of each year.

When the legality of the agreement was questioned the purchasers of the machinery protested against the suggestion to restore old competitive conditions; they said in so many words: "Do not disturb this association; it is an advantage to us to have prices fixed for the year, and it is even more important that we know that all who buy pay the same price."

Again, in the case of a certain railroad specialty, the roads much prefer the sellers should coöperate and maintain a fair price, and each be content with the customers he has rather than slaughter prices in efforts to extend the

use of his particular device—experiments that usually cost the roads far more in extra parts and repairs than any possible saving in price.

It would not be difficult to name article after article the consumers of which would vote unanimously, if they could, that prices should be fixed to all alike and maintained for definite periods without variation.

There is scarcely a manufacturer who would not prefer to have the prices he pays for raw material—yes, and for labor—fixed from season to season.

III

To test their attitude the following questions were put to the representatives of some twenty independent and sharply competing companies engaged in the manufacture and sale of an output, the raw material of which is steel as it comes from the rolling mill.

"If you had your choice, which would you prefer, to have the prices of the raw material you buy fixed from season to season, or have the power to combine and fix the prices of what you sell?"

"We can take care of ourselves if given a fair deal by the mills."

"What do you mean?"

"That no rolling mill shall give one company an unfair advantage over another."

"Explain."

"There is a market price for the steel we use; to-day it is 1.10 Pittsburg. Everybody is supposed to be paying that price, and when we bid most of us are compelled to use that figure as a base in making our estimates of cost, but we know that certain companies, closely allied to the

mills, get lower prices; they get as low as 1.00, possibly .90. What chance is there for the rest of us?"

"You mean you will have to go out of business if you cannot buy your raw material as low as the favored companies?"

"Exactly, they are selling below our cost."

"But isn't that just the sort of competition the public wants?"

"No, for it means monopoly in the end—it is the rankest sort of competition, and when we are driven out of business the public will pay the piper for the fiddling."

"Then what you want is a uniform price for what you buy?"

"Yes, the same price to all, large and small—a square deal, no rebates, no favors."

"The same price for how long, a week, a month, a year?"

"In our business the price of raw material should be fixed for periods of not less than six months."

"With notice in advance of changes?"

"Of not less than three months."

"These propositions will strike the public as novel; you gentlemen have come together to devise some way to improve conditions in your industry; the natural supposition on the part of the outsider is that your first step will be to 'fix' the prices of what you have to sell, and here you are demanding that the rolling mills fix the prices of what you have to buy."

"Yes, if they will do that we can all start even and compete on the same basis; we are not afraid of open competition in selling if no one has a secret advantage in buying."

"But what you demand means some sort of a combination on the part of the mills."

"Yes, and without some form of coöperation whereby

the same prices are quoted to all buyers alike, competition is a farce."

"That sounds like a new proposition."

"But it isn't. All we ask from the rolling mills is the same treatment the law says we shall have from the railroads—the same rates and the same service to all, with no sudden changes made to help one man or one locality at the expense of another."

IV

While the prevailing demoralization in the prices they were getting was a matter of serious concern, the usual remedies by way of "understandings," "gentlemen's agreements," etc., etc., were dismissed as inefficacious; the discussion invariably came back to the proposition that the prime cause of disastrous conditions was secret and unfair discrimination on the part of those from whom they bought.

It was conceded that each of the companies represented could make a good living in its own locality if it could buy its raw material on the same basis as larger companies located at a distance, but if any large company had an "inside" price from a mill on raw material, then it had the same unfair advantage it would have if it had an "inside" arrangement with a railroad on freight—the local company is out of the running.

It is not from collusive bidding and price fixing that the public suffers most, but from the secret methods of the old, the false competition.

It is not that men get together too much, but that they do not get together enough—*and in the open.*

V

It is unfair when the great rolling mill gives a secret price to one customer to enable it to get contracts against competitors who are charged more for their material, but the practice is just as unfair when the lumber yard in a small town gives a secret price to a favored carpenter to enable him to get work as against others who are charged regular market prices for the lumber they need—and this is done so generally that it is often known which carpenters are allied to particular yards.

A favored contractor is often in a position to make a bid at what the material costs a competitor, and, if he gets the contract, make his profit on the secret discounts he gets from the parties who supply him.

All this is within the experience of every man who has had occasion to build or have any amount of work done. The "tricks of the trade" are infinite in number and variety.

"Sharp" buying is by no means confined to the purchasing agent of the large corporation; he but practices systematically what the farmer, the carpenter, the mechanic do instinctively.

The farmer who is about to build a barn takes his bill of stuff needed and goes from lumber yard to lumber yard, from mill to mill, getting prices; like the purchasing agent, he does not hesitate to say, "I've got lower figures than yours," or, "I can do better'n that," "You're too high by a good deal," when he has no better prices.

The carpenter does the same thing, he plays one yard against another until he gets a price below what the lumber should be sold for, all depending upon conditions at the time.

In some towns the lumber yards are shrewd enough to

meet this sort of buying by a secret agreement to inform one another regarding prices made to certain contractors.

Coal yards are subjected to the same misrepresentations by buyers who contract for winter supplies, with the natural result that as prices are cut lower and lower inducements to give short weight and inferior coal multiply,

Blame for false measures, inferior and adulterated goods is laid at the door of the maker and dealer, when buyers are themselves responsible; they make it difficult for the absolutely honest merchant to make a living.

True, in time a reputation for squareness, for honesty, for good goods at fair prices, becomes a man's most valuable asset, but it takes time and money to build up that reputation, and many men in business are not in a position to wait; unless they can make money at the start they must give up—they are the ones the public, by unfair and unscrupulous buying, literally force into unfair and unscrupulous selling.

VI

All this is apropros the proposition that whatever evils are found in the management of large corporations are not peculiar to trusts, but have their roots in human nature and the legislation that reaches them will probe deep.

The open-price policy—explained in succeeding chapters—of the new competition will help greatly to expose and correct some of the more glaring evils.

When all prices, all bids are made openly so that both customers and competitors may examine and analyze same, it will be exceedingly difficult to hide agreements intended to favor some to the detriment of others.

Just now the people are crying for "More Competition," what they want is *more coöperation.* Competition has run mad, it is responsible for nine-tenths of the eco-

nomic abuses that exist, it is responsible for the trusts themselves; it was the old "cut-throat" competition, with its countless secret practices, that gave the Standard Oil Company its opportunity. It was the threat by the Carnegie Company of still more drastic and relentless competition that led to the formation of the U. S. Steel Corporation.

It would be difficult to point to a trust that did not have its birth in competition so merciless that combination seemed the only way out.

CHAPTER VIII

THE NEW COMPETITION

I

The basis of the old competition is secrecy, the strength of the new is knowledge; the essence of the old is deceit, the spirit of the new is truth. Concealment characterizes all the dealings of the old; frankness is vital to the new.

The old looks with suspicious eye on all associations and combinations; without coöperation the new is impossible.

II

Suppose all the carpenters in a place, instead of acting as jealous and independent units, meet weekly in an association, the sole object of which is the frank interchange of information.

Suppose they disclose and discuss freely:

1. Every element that enters into the cost of their work.
2. Work in hand, the terms and conditions upon which it is being done.
3. Work in prospect; all requests for bids, with frank interchange of information regarding such proposed work, and the conditions under which it must be done.
4. All bids actually made on work.
5. Conditions affecting their general welfare.

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Such an association implies a degree of frankness heretofore unknown in the industrial world, but a condition toward which the industrial world is progressing. So long as its members enter into no agreement to fix prices or control competition, the legality of such an association could hardly be questioned.

The effect of competition under such open and straightforward conditions would be stability of prices at normal levels. Competing in the open with full knowledge of all the conditions influencing others, no man would make a ruinously low price or an arbitrarily high one. The competition would be real, keen and healthful. Prices would vary, but they would not vary widely; men needing work would bid to get it; others with plenty of work would not try; in dull times prices would approach cost, but the educational value of the association would tend to deter ruinous bidding; open criticism of work inefficiently done would expose the tricky bidder.

As there would be no secrecy about such an association, the public would understand its workings; customers would reap the benefits of true competition, and, at the same time, lose the unfair advantages of false.

III

Every town should have its *Industrial Exchange,* a place of meeting for all trades, and every contractor in all lines of work should be a member of this exchange.

In larger cities the exchange would have as many different sections as there are different trades, each section with its own headquarters or room for meeting. There would be no hard and fast lines, no barriers of antagonism, of jealousy and distrust. The competition, the rivalry, would be friendly and open.

While general contractors would have their own section, they would also participate more or less in the deliberations of all the sections in which they were interested, and there should be no rule that would deter members of any section from attending the meetings of another, or from participating in such meetings if they desired.

Divisions into sections and the meeting of each on its own day would be for convenience only, and not to draw any line of separation. In a small town it might be more convenient for all trades to meet together one evening a week and discuss all matters in open meeting.

A representative central body would govern with a light hand in an advisory rather than an arbitrary manner. Coercion should not be used, and no rule adopted to control individual action and initiative—other than the *one rule of reporting all bids and prices;* that would be the basis of the Exchange.

These details are more fully discussed in the chapter on Open Price Associations, but they are briefly mentioned here because it is important to call the attention of the labor world and of small contractors to the advantages of such associations.

In addition to labor unions there are now in existence Builders' Exchanges and organizations of manufacturers and employees generally, but they operate in a spirit of antagonism and under conditions of secrecy; each meets behind closed doors; hardly any two would be willing to come together and discuss fully all matters that concerned them.

These organizations can be readily transformed into open price associations, but the change would be a revolution—a revolution in methods and a revolution in relations.

The experiment is worth trying, on this hypothesis, if

no other, present conditions of distrust and antagonism, of bitter and disastrous competition, could not be any worse, then why not try a plan that at least promises freer intercourse and more friendly coöperation?

Keep in mind the goal to be reached is *a central exchange,* so open, so *public* that *labor, employers, customers* will resort to it for information regarding work, wages, prices and all conditions affecting every trade and industry represented.

Carried to its final realization and perfection every person working for wages—man, woman, or child—would be registered together with conditions of employment. This alone would do more to correct the evils of child and woman labor than all the laws the State can pass. Publicity is the greatest corrective agent known to society.

Every contract for work or material would be registered; prices of material would be filed from day to day; there would be no secret rebates and discounts, no unfair preferences; in the open debates and opportunities for sharp questioning there would be no chance for concealment.

Customers would have opportunities to come in and make their complaints regarding both charges and character of work done.

The public would be free to avail itself of the information afforded by the association, for it would be in the best sense of the term, a *public body,* a representative body, more vital to the welfare of the town than the Common Council or Board of Aldermen.

The development of the idea to such a degree of perfection may be a far look ahead, but there is no reason why there should not be a beginning, why small associations should not be formed along the lines suggested, why, for instance, the carpenters and building contractors in a town should not get together in a frank and open way to exchange information.

The medieval guilds were supremely selfish in their objects, and had very little in common with the new ideas, but they prove the strong tendency inherent in man to cooperate, and there is no reason why they should not be revived in other and better forms, there is no reason why the trades of a locality, the industries of a country, even the industries of the world, should not be grouped each in its special organization. There is no reason why cordial, friendly and genuinely social coöperation should not take the place of vicious, vindictive and unfriendly competition. There is no reason why a desire that all should prosper should not take the place of the present hope that all but self shall fail. There is no reason why industrial peace should not take the place of industrial war.

IV

It is almost needless to point out that the danger ahead of such frank and friendly coöperation is—as the law now stands in this country—the agreement that suppresses competition.

Given an association in any trade or industry based upon the single agreement to exchange information there would be the temptation for groups of members to agree upon their bids, to apportion work and so secure for the time being arbitrarily high profits by suppressing competition—a policy that always "kills the goose that lays the golden egg."

But this temptation to go wrong is inherent in every movement toward perfection; it must be recognized and resisted; it is no argument against systematic effort toward the establishment of better conditions.

At present men are possessed with the idea that the moment they are brought together in any sort of an as-

sociation they must arbitrarily advance prices. If they will do precisely the reverse, namely, encourage true competition, leaving each man theoretically and practically free to quote such prices as he pleases and to change them as he pleases, prices and profits will take care of themselves; they will be normal and reasonably constant.

It should be again noted that in the labor world the unions do many of the things suggested, they gather and spread information regarding conditions of employment, so that even the ignorant immigrant is quickly told the hours he should work and the wages he should get; but in attempting to arbitrarily fix hours and wages the unions check individual initiative and suppress competition. The strength of the labor movement lies in the element of cooperation; its weakness in the element of repression. If it is right and legal for an association of laborers to arbitrarily fix wages, it is equally right and legal for an association of employers, who are compelled to pay the wages, to fix prices—the truth is that in both cases competition may be suppressed, but not necessarily, for the regulation of wages and prices from time to time may be not only beneficial but essential to the development of true competition. The public recognizes the fact that wide fluctuations in wages are an evil, but it does not yet see that wide fluctuations in prices are equally bad.

V

The retail trade in this country is on a vastly better basis than the manufacturing. America led the world in the one-price policy. Even in country villages customers know that it would be useless to "dicker," to "bargain" in the retail stores. The prices are fixed; they may be changed any day, but if changed they are plainly marked

and changed to all; no clerk has power to make the slightest reduction; if the proprietor should do so, it would cost him his reputation and his trade. Shops with two prices are run by a class of more than doubtful standing.

As the traveler approaches the Orient he leaves behind the "one-price-plainly-marked" system; he enters cities where no shopkeeper expects to get what he first asks and every trade is a trial of wits.

In retail trade a merchant may go through the establishment of a competitor, examining goods and noting prices; often the prices of large classes of goods are published in advertisements each morning. With full information people trade where they like, many going to stores where they know prices are higher rather than to others justly famous for their very "real" bargains. The extravagantly high-priced shop on Fifth Avenue holds its own against the seller of goods just as good on the side street.

VI

The secret price has fallen into disrepute in America and England. It has been abandoned by the best dealers on the Continent, though even in Paris there are comparatively few places where one is absolutely sure the price asked is the only price; offers bring responses and there is a pretty general conviction that tourists pay more than natives.

In the most reliable places of business in this country goods are marked in plain figures, and both customers and competitors are free to note and use these figures. Here and there a perfectly reliable merchant clings to the old habit of marking the price in cipher. Why? It would be difficult to say, since his cipher is known to every employee, to every competitor who cares to give the matter ten min-

utes' investigation, and to every bright customer who prices a dozen articles and compares the letters that stand for the figures. The cipher is a relic of the old furtive policy, and is bound to go; customers resent it because they are becoming accustomed to plain marks and distrust the man who looks at a few cryptic letters and says the price is so and so—if it really is so and so, why not mark it for everybody to read? Why make a confidant of every cash-girl and alienate every customer?

In the manufacturing and contracting world the old, discredited policy prevails. Manufacturers and contractors, large and small, still do business on a par with the wily Oriental. Each is mortally afraid his competitor will find out what he is doing; nearly all have as many prices as they have customers; they ask one figure, but, like the Oriental, are ready to take almost anything offered. Purchasers know this, so it is not surprising that ordinary transactions are attended by unscrupulous representations.

From the president down to the least important salesman everybody is clothed with "discretion," everybody can "make" or "shade" a price; if a list is published no one expects to get the prices therein named, there is always a discount, and discounts upon discounts, with a further concession for cash, or an added inducement in terms, and so on endlessly, depending upon the resourcefulness of the salesman, the flexibility of the employer and their desire to "land the order."

The buyer is never certain when the last word is said, even after the contract is closed he has the feeling he might have done better if he had held off a little longer—it is all a gamble, and demoralizing to everyone concerned.

No men should have more respect for their calling or stand higher in the commercial world than the able representatives of great manufacturing and contracting companies, but—judging from what they themselves say of one

another—few men command so little confidence in their own circles as successful salesmen. This is the fault of the system.

VII

It is the aim of the New Competition to change the conditions which produce these results, to establish the trade of manufacturing goods on the same sound and straightforward basis as the trade of retailing them, and the fundamental step is the adoption of the Open Price Policy.

There is no reason why the American manufacturer should not do business as the American merchant does, why he should not throw his shop open to customers and competitors, why he should not mark everything he makes in plain figures and let everybody know what those figures are, changing them as he pleases, but changing them to all alike, making such discounts as he pleases on large orders, but making them openly.

Manufacturers suffer the disadvantage that, for the most part, they are widely scattered, each more or less influenced by his locality, and almost all look upon one another with ill-disguised hostility.

The first step toward the development of the new competition in any given industry is to bring the hostile units together, make them acquainted, allay their distrust, induce them to abandon the played-out policy of secrecy, and to agree to exchange information along the lines enumerated —in short, to do business on a frank and straightforward basis.

To the small or the isolated manufacturer this sort of coöperation is of far greater importance than to the large concern centrally located. In many industries the

time is at hand when the small producer will be able to exist only in coöperation with the large.

The new competition helps the small producer by giving him the benefit of information and valuable data possessed by the large; it shows him where he can rightfully and successfully compete, it marks out the field that is legitimately his.

VIII

It is not easy to get rival manufacturers to agree to file for the benefit of all interested the bids and prices they make, *but it has been tried,* and the new competition works better than the old.

It is not easy to make men who have habitually referred to competitors as rascals and liars admit that they are not—*but it has been done,* and herein is the new competition better than the old.

It is not easy to persuade men that bidding below cost to beat a competitor is poor policy, *but it has been* demonstrated, and in this respect the new competition is better than the old.

It is not easy to convince courts and legislatures that rivals in the same trade or industry can get together without entering into illegal agreements, *but they do,* and that is another of the good results of the new competition.

CHAPTER IX

THE OPEN-PRICE POLICY

I

The basis of the new competition is the open-price policy.

II

What is meant by an *"open"* price?

Exactly what the word signifies, a price that is open and aboveboard, that is known to both competitors and customers, that is marked wherever practicable in plain figures on every article produced, that is accurately printed in every price list issued—a price about which there is no secrecy, no evasions, no preferences. In contract work it means that every bid made and every modification thereof shall be known to every competitor for the order; it means that even the cunning and unscrupulous competitor may have this information. In short, the open-price policy means a complete reversal of methods now in vogue.

Many strongly established manufacturers who make a practice of adhering quite closely to their prices will say, "Why that is what we are doing now." A dozen searching questions will convince them they are not, and a half dozen crucial propositions to reform their methods along the new lines will lead a goodly number of them to settle back in their chairs and say, "No, no, that's too advanced

for us." The writer's experience has been that the men who are loudest to insist they follow the open-price policy are the last to adopt it. What they want is a *"fixed"* price policy.

III

The *secret* price is the mark of the old—*false* competition.

The *fixed* price is the mark of the illegal combination—*suppressed* competition.

The *open* price is the mark of the new—*true* competition.

IV

The secret price must go, it has had its day, it does not belong to the twentieth century, it is part of the old order of things that is giving way to the new.

Men are just beginning to learn that it is easier to make money by straightforward methods than by devious, that truth is a commercial asset.

Before the days of steam and electricity men had plenty of time for lying. The slower the means of communication the greater the opportunity for deception—a letter is an *excuse;* a telegram an *answer;* a telephone a *fact.*

Many a man declines to use the telephone because it is devoid of opportunity. Many a woman exclaims in annoyance, "Why did she invite me over the phone? I just had to accept. I could not think of a thing to say."

More business is done to-day by word of mouth than ever before. Men have no time to make contracts, draw up memoranda, call in lawyers; it is "yes" and "no," and millions change hands.

In the great world of finance, of stock and grain dealings, of big transactions rarely does a man "go back on his

word." When he does his reputation—his biggest commercial asset—is gone forever.

Were it not for this confidence it would be impossible to transact more than a tithe of the business done in any of our great cities. Men who are known to be devoid of integrity in other directions keep their word in financial and commercial matters for the same reason they keep their credit good—it pays.

V

Truth is a *labor-saving device.*

The *open* price is a *labor-saving device.*

The *secret* price is *cumbersome* and *ineffective.*

When each merchant ran his own stall and made a sale or two a day the secret price was a part of his calling, it gave him his opportunity, it was his recreation, it roused him from his lethargy and sharpened his wits, it was the life of the bazaar; mark prices in plain figures and the merchant goes home and leaves his goods in charge of a boy.

As trade increased and the merchant was obliged to employ others to help sell, some sort of a price became necessary, not a fixed price, not a price that could not be "shaded" to the shy customer—Oh! no. But some price that would guide the salesman in his extortions. This price, together with other useful information regarding a hypothetical cost below which the salesman should not go, was marked in cryptic figures on the article.

That was the next step, and the double marking survives to this day in some of our best shops. Some mark both cost and price in cipher, others mark the price in plain figures, but the cost in cipher; still others mark only the price and in plain figures—three steps toward the one-price custom.

The advance has been due less to any deliberate intention to do what is right and fair by customers than to necessity; the retail trade has developed to such an extent that the merchant himself needs the protection of the one-price-plainly-marked system to enable him to do the amount of business he does.

The manufacturing world has just about reached a stage of development where it, too, needs the one price system for identically the same reasons—self-protection and to expedite trade.

VI

There is not a word to be said for the secret price save that it has long been a custom—and that is not in its favor.

Why should not one man know what another pays for an article?

"Because it's none of his business," some one says.

But if a farmer is about to buy a plow or a reaper is it not of interest for him to know what his neighbor paid for the same implement? If he is charged one price and his neighbor another is it not the business of both to find out the facts?

If you are a merchant is it not of the utmost concern that you should know whether you are paying more or less for your goods than your competitor next door?

If you are a jobber does not your existence depend upon your getting what you handle at least as cheap as other jobbers?

From the point of view of the buyer, whether consumer, retailer, or jobber, the secret price is an evil; only those buyers favor it who cunningly think they get better terms than others.

It is the business of every buyer to find out, if he can, what others pay; that is the secret of good buying. Any

fool can pay what he is asked; it takes a clever man to pay what the other fellow is asked, or less.

VII

The secret price must go, because

It is opposed to the "rapid fire" business methods of to-day.

It is a cloak for fraud, deceit, and unfair discrimination.

It fosters distrust between seller and buyer.

It is of no advantage to either seller or buyer.

VIII

When the proposition is laid down that "the *fixed* price is the mark of the illegal combination—*suppressed* competition"—it is so generally true that it might be left without comment, but it is not invariably true.

Under the old competition, with its secret prices, cuts, rebates, etc., etc., when a buyer is suddenly confronted by more or less uniform prices, cessation of rebates, discounts, etc., he knows that competition has been suppressed in some manner and he looks for the combination; nine times out of ten where the change in terms is sudden the combination exists.

But where conditions in any given trade or industry improve gradually as the natural result of the adoption of franker and more straightforward methods prices tend to become uniform without concerted action.

Price storms, like wind storms, tend to subside—but also to blow up again. Violent fluctuations are abnormal and destructive. If subjected to no outside influences prices in every industry seek and find their levels. Prices are not

"fixed" in the active sense of the verb, but they become stable as the result of normal conditions.

In rare instances they may become and remain for a time so stable they bear all the ear-marks of being "fixed," but they are not; there has been no agreement, no combination.

Where prices are stable, in a normal sense, it is nearly *always in those industries where each competitor knows what others ask* and each refrains instinctively from cutting because he knows if one cuts all will; the industry has probably been through more than one disastrous trade war and is ever on the brink of another.

"Fixed" prices in this sense—*stable*—are due to the extent to which the *open price* prevails.

The more *open* the price the stronger the tendency toward stability and that, too, without combination. The open quotations—prices—of stock exchanges support our theory.

But, while many long established industries—especially those controlled by a few conservative and well managed companies—have worked toward more or less openness and frankness in quoting prices and gained corresponding advantages in the way of greater stability in prices, the condition is not one of any degree of permanence; it rests on no well defined policy; its sole basis is fear of a trade war, a fear that is apt to yield to the pressure of "hard times."

IX

The *open* price policy of the new competition is a policy that demands concerted action for its adoption and promotion.

It has taken the retail trade a century to grow into the *one-price-plainly-marked* policy. Even now its advantages

are not fully recognized. The policy was not worked out as a great economic step. Merchants adopt it or not, as they please, and to-day the general impression is that the matter is wholly a question for the individual dealer to decide for himself—if he thinks it pays he uses it, otherwise he sticks to the secret price—an irrational mode of doing business.

Enough has been said to show that the issue between the secret price and the open is both economic and ethical. *The secret price is wasteful and wrong, the open price is saving and right.*

That being true, the adoption of the open price should not be left entirely to the whim of the dealer. There are two large classes as vitally interested in his action as he is himself—other dealers and all his and their customers.

The dealer or manufacturer who asserts his right to quote secretly such prices as he pleases asserts his right to demoralize a trade as he pleases; *that right does not exist;* he is a *trade anarchist.*

In even the retail trade it would be possible to promote the systematic adoption of the open price policy by concerted action; customers should insist upon it; dealers should form associations to develop it; eventually the law should aid it.

The growth of large establishments, the almost infinite number of sales by salesgirls and salesmen to whom it would be impossible to give any discretion regarding prices —these are the conditions that have brought about the use of the one-price system in the retail trade. The big merchants could not conduct their business on any other basis. The little have followed because compelled.

To a certain extent the same forces are operating in the manufacturing world. Establishments are becoming so large, salesmen so numerous, that more or less fixed rules regarding prices and discounts must be adopted, otherwise agents and salesmen quote in opposition to one another. It

requires no little ingenuity on the part of the management of a large corporation to keep its own agents in line; if a price is changed all must be notified.

But, while there is a certain tendency toward more open prices, the tendency is so feeble and confined within such narrow limitations that little progress will be made without concerted action.

The advantages of the open price policy, *as a policy,* as a *definite economic method,* must be recognized and its systematic *adoption urged.*

X

The interest of the public must be aroused to the *ethical* significance of the step, to its *rightness,* its *fairness.*

Manufacturers and contractors must be convinced of its *economic* significance, its value as a *labor-saving* device, its natural influence upon *stability* of *prices.*

In retail trade the open price may prevail to a certain degree by the mere marking of goods in plain figures, but in the manufacturing, and especially the contracting, world, where orders and contracts are for products to be made and work to be done, no system of marking prices can be utilized; an entirely different method must be adopted if prices are to be open.

Coöperation in the form of *open price associations* is necessary.

CHAPTER X

OPEN-PRICE ASSOCIATION

I

In these days of uncertainty regarding the law it is not uncommon to hear men say,

"We have a little association, but we never talk about prices."

"Then why do you meet?"

"Oh, just to lunch and talk over things generally."

"You don't agree upon prices?"

"No, sir!"

"You meet for the fun of the thing?"

"That's about it."

"Some of you travel a thousand miles once a month just for the pleasure of lunching together?"

"Um—m—, well, you might put it that way."

Such child-like pretenses deceive no one, and no self-respecting lawyer would permit clients to make such futile statements to a court.

II

It is almost as common to hear men say, "We have an association, but we don't agree upon prices."

"What do you do?"

"Why, I get up and say, 'My price is so and so'; and the others get up and say their prices are so and so."

"And the result is, the price of everybody is 'so and so'."

"Naturally, but we don't *agree* they shall be, we just exchange views and let prices take care of themselves."

This set of men is much franker than the former. They do admit they come together to help conditions, that they freely discuss prices, and, *so long as there is no agreement fixing prices or otherwise suppressing competition,* their action is probably legal even though as the result of their interchange of information prices are more or less constant; but the danger lies in the argument that the several statements that "My price is so and so" amount to indirect promises or moral assurances that the prices named will not be changed, and this indirect or moral obligation may be inferred from results.

To go a step further—it probably would not be illegal for men to meet in good faith and compare costs and prices for the purpose of preventing, if possible, disastrous competition and of getting reasonable returns for their products, but to what extent such frank and straightforward efforts to do only what is reasonable and fair from a sound business point of view will be held legal in this country depends upon the application the courts may make of the general principles laid down in the Standard Oil and Tobacco cases. [1]

However, no man whose aim in life is to bear himself creditably among his fellows cares to split hairs with the law, to take any chances on a court's decision as to whether his acts are "reasonable" or "unreasonable."

[1] In a bill filed last year (1911), to dissolve a certain "pool," the members of which met periodically to discuss prices and trade conditions, the Government said: "It is not here alleged that merely assembling and mutually exchanging information and declaration of purpose amount to an agreement or a combination in restraint of trade."

III

Until the law is changed the one safe course is to have nothing to do with any conference or association the objects of which are not clearly expressed in black and white, and the proceedings of which are not fully preserved.

If the prime object is to help trade conditions then that object should be set forth frankly, and the means adopted to attain the object should be described so fully that judge and jury can see they are fair and legal beyond question, and quite sufficient to attain the end without resorting to any unexpressed agreement, any moral obligation, or "gentleman's understanding."

It is believed the open price policy supplies the means; that it is sound, sensible and legal; it involves no action, no agreement of any kind or character that is not well within a man's constitutional rights. The right to publish prices, exchange bids freely and openly, to deal frankly with customers and competitors, are rights that cannot be curtailed by any legislative body in this country. Congress and legislatures may so provide that the exercise of these rights shall not be abused; that sound and healthful coöperation shall not take on the features of arbitrary and oppressive combination, but *coöperation itself cannot be prohibited.*

IV

It is one thing for men in a meeting to say, one after another, "My price *is* so and so," with the result that after the meeting all their prices prove substantially the same as the figures mentioned.

It is quite a different thing for the same men to come to a meeting and each report, "My actual sales for the past

month *have been* so and so, and here are the details of each transaction."

In that statement there is no direct or implied agreement to maintain prices, no obligation of any kind to refrain from cutting.

The right of a body of men to say what they *will* do may not be clear under the many anti-trust laws, but we have yet to hear of a law that tries to prevent men telling what they *have done.*

When men meet and each says, "My price *is* so and so," and *all say the same,* a promise to maintain that price may, perhaps, be inferred from subsequent events; but no such promise can be inferred from frank statements of past transactions; and yet more in the way of stability of prices and elimination of unfair and vicious competition will result from the mere interchange of information than from an agreement to maintain prices.

The *open price* plan is the frank statement of actual transactions, and *actual transactions* interest competitors far more than assurances regarding future—the facts speak for themselves, the assurances—irrespective of their legality—are seldom kept.

The theoretical proposition at the basis of the open price policy is that,

Knowledge regarding bids and prices actually made is all that is necessary to keep prices at reasonably stable and normal levels.

No agreements to maintain prices are necessary, they are not only unnecessary but detrimental. They do not work satisfactorily in countries where not forbidden by law, they have never worked here. They give rise to more distrust, more bad feeling than any amount of cut-throat competition, and, in so far as they are effective for a time in advancing prices, they are direct inducements to others to enter the business and so, in the end, make competition all the keener.

All this is true irrespective of anti-trust laws.

In so far as such agreements, pools and combinations have seemed to prove effectual in this country or in England and Germany, where the law does not prohibit, success has been due to peculiar, sometimes artificial, conditions surrounding the agreement, or to state encouragement, but never under normal conditions have such pools resulted in any permanent good.[1]

An open price association has absolutely nothing in common with old line pools and combinations. It is opposed to them and cuts the ground from under them.

Nor has it anything in common with the many trades associations already in existence—it is a new departure.

[1] The following, just reported from Germany, where the government favors such agreements, illustrates the utter futility of attempts to control competition and prices by arbitrary agreements and allotments, which artificially stimulate production, and in the end increase competition:

"Cables told last week of the difficulties the great steel manufacturing concerns in Germany were having over the renewal of the German Steel Works Union for another term of five years. This union is nothing less than a trust or pool established with the friendly knowledge of the Government to regulate output and prices—a lawful 'combination in restraint of trade.' The purpose of the union is to regulate the output of the different companies in the interests of maintenance of prices.

"It is now reported that the members of the old union have failed to come to an agreement upon the division of permitted manufacture of the most highly competitive products of the different mills. The big steel makers have agreed to different allotments of 'A' products.

"'A' products consist of semi-finished steel rails, and other railroad material and structural shapes. The 'B' products, which have heretofore been sold by the associated workers themselves at their own prices, under allotments fixed by the Steel Works Union, consist of bars, wire rods, sheets, and plates, tubes and castings and forgings.

"What has militated against the renewal of the agreement on 'B' products was the great activity in the past two years in the building of new capacity by the larger interests, conspicuously Deutscher Kaiser and Geisenkirchen, causing an entire change in the conditions prevailing when the agreement of 1907 was made."

V

Employers have been more or less welded together by the attitude of labor. They have been forced to unite to deal with strikes that are called, in many instances, as the result of controversies between union and union, and not between employer and employee.

In all trades associations existing at present the members coöperate for only certain narrow purposes, usually against a common enemy. So far as bidding upon work is concerned they remain independent and distrustful units; or, if they do discuss prices, it is with no intention of exchanging information frankly but with the purpose of suppressing competition entirely.

There is, however, no reason why these old offensive and defensive associations should not be transformed into genuine coöperative bodies along the new and less belligerent lines.

VI

Since no two industries follow precisely the same methods in marketing their outputs it is impossible to set forth in detail in a single chapter the steps that should be followed by all to establish the new policy. While the fundamental propositions are the same, each industry requires its own reporting scheme.

For instance, take the two great divisions in the manufacturing world, (a) Those manufacturers who produce goods that are sold to jobbers and dealers, (b) those who make only to specifications, each contract differing more or less from all others and calling for special prices or bids.

Obviously the steps necessary to establish the open price policy among the former (a) will differ materially from the steps required with the latter (b). Furthermore, it may be

said that with any set of manufacturers or contractors the open price movement must be a matter of growth. However willing, no body of men will take it at a single jump, it is too revolutionary. It requires time to eradicate traces of habits which have become second nature, habits of thought, of speech, of conduct. Even when men are honestly trying to think along the new lines they will talk and correspond along the old, the old phrases will crop out and their letters will bristle with language that heretofore has been used only in "fixing" prices and suppressing competition.

On first impression it would seem comparatively easy to outline an open price scheme for industries belonging to class "A," but difficult to do so for those in class "B." Such is not the case; it is simply a matter of detail in both cases. As a matter of fact, the same scheme—except in general outline—will not fit any two industries however alike they may be in their methods of marketing outputs.

VII

To form an Open-price Association let the manufacturers interested call a meeting to discuss the plan.

At the very outset they must be made to understand that the meeting is not called for the purpose of entering into any agreement along old lines; it is not called for the purpose of fixing prices, allotting business, controlling competition, restraining trade, or creating a monopoly; there is no intention of doing any of these things either directly or indirectly.

"Then what are we here for?" some practical man will ask in a tone of disgust.

"To get each one of you *to tell the truth*——"

"Ha! If you can do that you're a wonder."

"If you won't tell the truth about what you *are* doing

how can you believe in each other when you promise what you *will* do?"

"We don't."

"You mean that——"

"We've had all sorts of agreements in the past and not one has been lived up to; there isn't a man in the room the others would trust out of their sight."

VIII

That is no fanciful conversation, but a condensation of things said again and again by different sets of men in different industries.

Not infrequently they speak so plainly and profanely regarding one another's unreliability that it is surprising they do not come to blows. The reason why they do not illustrates an interesting psycho-commercial—to coin a term—condition. In all ordinary walks of life to call a man a liar to his face is to invite a blow, or, if not a blow, at least some very plain resentment of the charge. In commercial life to call a man a liar is a split between an insult and a compliment.

This condition of distrust among competitors usually follows years of more or less futile attempts to get together in combinations to fix prices and control competition, combinations the very nature of which afford opportunities to the more slippery members to profit at the expense of the less slippery. In these combinations disintegration invariably begins before integration is complete.

IX

Having convinced those present that they are not called together to do anything they have ever done before, proceed with the next step.

That is a careful inquiry into actual conditions in the particular industry.

This inquiry should take up each plant or company represented with a view to ascertaining and noting briefly in the minutes the establishment of the plant in its particular locality and why; its capacity, labor employed, and its development generally, with figures showing its maximum output in the best of times and such violent fluctuations as there may have been from that condition.

Accurate minutes should be made regarding conditions as they exist at the time of the meeting; if there is secret and unfair competition that should be set forth carefully; if conditions are such that producers are at the mercy of buyers and purchasing agents the situation should be explained clearly.

If the association accomplishes no more than induce its members for the first time to institute a systematic inquiry into fundamental conditions it serves a most valuable purpose, for it is amazing how even the large industries of this country are conducted more or less blindly, with no central organization the prime objects of which are to ascertain, classify, reduce and report laws, tariffs, wages, prices, trade customs and all competitive practices. Where one, two, or three large companies may attempt something of the kind it is usually in a spirit of opposition to others.

The details of the organization of the association and especially of the reporting plan will depend largely upon conditions developed.

X

The extent of the organization will depend upon whether the membership is large or small.

In industries where there are only a few companies or

individuals all that will be needed are a chairman and a secretary, who may also act as treasurer.

In larger organizations a full set of officers will be useful.

The two essential factors are,

1. A central office or bureau in charge of a
2. Secretary.

A secretary must be selected who has no connection with any company in the association; since he receives information from members that can be exchanged only in certain ways, his position is one of trust.

With the development of the open price policy *ultimately* all secrecy should disappear, but for the present it is impossible to get men to coöperate beyond certain points —at first to only a very limited extent, later they become more frank and open, but never quite reach the ideal.

With a central office in charge of a secretary the association is ready to establish the open-price by filing with the secretary:[1]

1. All inquiries.
2. All bids.
3. All contracts.

XI

The proposition is simplicity itself, but, inasmuch as not one of these things has ever been done by any association of contractors or manufacturers, and each is diametric-

[1] We are here dealing with—let us assume—an industry the work of which is done on contract; that is, bids are called for by the purchaser and each job is a special contract, such as the erection of a steel building. The same reporting plan, with minor changes, would apply to an association of builders, or of carpenter-contractors, mason-contractors, plumbing-contractors—in short, to any body of men or companies who first bid on work and then do it under special contract.

ally opposed to custom and tradition, the suggestions are certain to be received with opposition.

"What!—report all the inquiries we get for business! Never."

"File all the bids we make! Not on your life."

"Hand in copies of contracts with our customers! I guess not."

There are two answers to all objections: first, those things must be done if the open price plan is to be tried; second, conditions can be no worse under the open price than under the secret, and they may be better, hence it is worth while to try the plan.

It is revolutionary to ask men to file all inquiries, all bids, all contracts for the information of competitors, and on its face it looks like a very foolish proposition, but it is not, and wherever tried it has worked out some good, not much in some instances, more in others, all depending upon how frankly and faithfully the plan is lived up to.

XII

Upon receipt of the information the secretary proceeds as follows:

The information contained in reports of inquiries is *not* interchanged. Members are not *furnished* any information regarding prospective bidders. There is no legal objection to giving such information *providing it does not lead to collusive bidding;* but the safer course is not to give it. From the reports of inquiries the secretary makes up a weekly bulletin containing statistical information. This report in itself is of value, especially to the small manufacturer, who has no means of keeping track of what is going on, and it is of advantage to the large producer since it helps the small to bid more intelligently, and intelligent competi-

tion is never so demoralizing as ignorant. This summary will give an accurate estimate of the volume of work in sight, together with its general character and other facts that will influence members in bidding. Obviously, if the weekly reports show rapid increase in inquiries, indicating a larger volume of work pending, individual members will not be so quick to fill up with low priced work, there will be a normal stiffening of prices; precisely such as results from crop failure statistics furnished by the Government.

XIII

On receipt of a bid the secretary does one of three things; depending upon the rules adopted;

(a) If the member sending in a bid endorses it "sealed" the secretary will so keep it, and no information regarding that bid will be sent to other members until after contract is let, whereupon all bids are open for discussion. It is needless to say that the member who marks his bid "sealed" gets no information regarding other bids; he simply elects to take his chances in the dark, in the old way; for the time being he foregoes the advantages of the association. It would be better if the reporting plan did not provide for "sealed" bids, since they are opposed to the spirit of the open price policy, but the writer has found in some instances that the only way to induce the very skeptical to try the open price plan was to give them the right to file bids sealed if they desired; in time they drop the practice because there is nothing in it, it offers no advantage, quite the contrary, it places the "sealed" bidder in a position of disadvantage as compared with other members bidding openly.

The argument most often urged in favor of the prac-

tice is, "Suppose I know the customer and am sure he will give me the contract, why should I make known my bid?"

The answer is that it is these "sure" things that are most uncertain, and by filing the bid open the bidder may be—usually is—surprised to find his "friend" is quietly getting bids from others.

(b) The secretary may interchange all bids as received—that is, the first bid is held until the second is received, whereupon copies of the two are immediately interchanged, and so on as each successive bid comes in. Under this plan the filing of a bid is the key that unlocks all other bids on file.

The theory of the open price demands the utmost publicity in the making of bids; the ideal condition would be an open exchange where all bids would be filed and, as filed, marked up on a blackboard—so to speak—where all interested might see; such a condition would work wonders in the way of saving of time and money to both contractors and customers.

For the time being, however, it is hard enough to induce men to exchange their bids more or less furtively; old habits of secrecy and distrust are too strong.

XIV

Now comes a fundamental proposition. No bidder is bound to adhere to his bid for the fraction of a second. After ascertaining the bids of others each is free to lower his own bid to secure the work, but, in all fairness, he must immediately file all changes so as to give other bidders chances to come in and compete further.

"That is a rotten scheme," exclaims the man who has come to the meeting with the sole purpose of "boosting" prices.

"Talk about competition! That will throw the doors wide open," protests another, and so on.

As a matter of fact, the frank interchange of bids with liberty to cut as members please does not result in fiercer competition; on the contrary, while it does not lessen true competition, it takes out the ugly elements that go to make up the old "cut-throat" competition.

To restate the matter concretely,—if Smith bids on a piece of work and, after receiving from the secretary copies of the bids of Jones and Robinson, finds he is the high bidder he is at liberty to put in a lower bid to get the work, but he must notify Jones and Robinson what he is doing, and, in all fairness, *notify them in time to permit them to revise their bids if they care to.*

Speaking from experience the writer can say that for a time after an association is organized the impression may prevail that there is an implied, a moral obligation not to cut bids, and members are reproached bitterly for cutting. This feeling is a survival of the old agreements to maintain prices, it springs from conditions where men did agree, directly or indirectly, to stand by their bids—the more indirect the agreement the greater the acrimony when cuts were discussed, and, sooner or later, those old combinations would fall to pieces, disintegrated by distrust.

Men will cut to get business when they need it, and they will cut all the more if they suspect others are cutting. No agreement strong enough to prevent this has ever yet been drawn.

That being true, the safe course is to provide for cutting, remove all restrictions, so that under the rules of the association no member can so much as question the right of another to bid as freely, as often, and as low as he pleases.

At first men are inclined to make cuts at the eleventh hour and close a contract before there is time to notify

the other bidders. The plea is, "I had no choice, it was either reduce my bid then and there and take the contract, or lose it altogether."

In some instances the plea is good, in most it is not. In some cases circumstances and the attitude of the owner are such that the bidder is given but a moment in which to decide, he may even be told that unless he makes the reduction on the spot and signs the contract his opportunity is gone. Until this condition of things is remedied—and remedied it will be—bidders will be tempted to make cuts and take contracts without notifying others as they should.

The practice is wrong and contrary to the spirit of the New Competition, but it will take time to abolish it.

In the great majority of instances where men, avowedly committed to the open-price policy, make cuts and close contracts at the eleventh hour without notifying other bidders, the plea of necessity is a subterfuge, they take the work because they want it and do not notify others because they fear the others would cut still lower.

XV

But, while members are free to change their bids as often as they please, the practice is a vicious one for this reason—*it is not fair to the customer.*

The man who makes one bid to a customer with the intention of making a lower if necessary is gambling on the chance of getting more than he is willing to take, he is doing precisely what the tricky second-hand clothes dealer does when he asks one price and before the customer can get away calls out a lower.

The Government does not permit that sort of thing, cities do not permit it. When a man bids on public work he

must put in his best figure and *stand by it;* if he is high he cannot change it.

Every retail merchant of any standing marks his best and *only* price on his goods.

In the end the open price policy will bring about the same conditions in the manufacturing and contracting world—the man who tries to change his bid will be looked upon as on a par with the second-hand clothes dealer.

XVI

Since members are free to bid as they please it removes the one prolific source of complaint and recrimination incidental to old-time associations namely, that "some one is cutting" and thereby violating an agreement expressed or implied to observe some price.

It is impossible to keep men to a fixed price, therefore why waste time trying to? It is possible to keep them to an agreement to tell others what they *have done.*

Note the distinction—the fixed price means an agreement of some kind to maintain a price, to do something, to live up to something. That sort of an agreement is never kept for long; quite aside from questions of legality the agreement is worthless because it is no stronger than each man's belief in the good faith of all the parties to it, and, since every man feels sure that at least some of his competitors will be quick to violate it and reap a profit, he secretly violates it himself.

The agreement to tell one another what *has been done* is quite another matter, since, after all, it simply provides for the systematic exchange of information that is sure to come out. This obligation is so fair and works out so many good results that the trickiest competitor in the end sees it is to his advantage to live up to it.

It takes, however, months of patient effort to educate all to the point of frank and prompt compliance.

XVII

The filing of contracts as and when closed is the final step in the reporting plan; it marks the termination of the competition. The secretary's office will thus have a complete file of each transaction—(1) the original inquiries; (2) all bids and changes in bids; (3) the contract as finally awarded. A report is sent to all other bidders on the work and they are able to compare the contract with the bid of the man who took it.

This final report enables other bidders to see whether the owner dealt fairly and frankly with them, or whether he asked them to bid on work to be done under certain conditions and let it to the successful man upon more favorable conditions.

So much for the operation of the secretary's office. In the reporting of (a) inquiries, (b) bids, (c) contracts, the central office has been simply the clearing house for information, it has handled all reports in a regular routine as provided in the by-laws, no meeting of the members has been necessary for the operation of the reporting scheme.

XVIII

With this data the association is ready for an intelligent discussion of the business of the month, and the plan is not complete without this discussion. The open price policy means not only open prices but open discussions.

To this end regular weekly, semi-monthly, or—at the longest—monthly meetings are necessary, at which mem-

bers must be represented by those who are familiar with the business and can speak authoritatively; meetings attended by subordinate agents who have only hearsay knowledge are a waste of time. The atmosphere may be surcharged with irritation and distrust owing to the manner in which a number of contracts have been closed. Under the old competition this is never cleared, but goes on from bad to worse.

Under the new competition it is the business of each meeting to clarify the atmosphere and start each month with a clean slate so far as complaints are concerned.

The quickest way is for the presiding officer to call the name of each member and ask whether any other member present has any complaint to make or questions to ask regarding work taken during the preceding month by the member under fire.

As between each member and the party complaining the other members are impartial listeners. Their presence and their neutrality, together with the good sense of the presiding officer, prevent the discussions from becoming acrimonious; the fact that each member has to go through the same ordeal is a strong deterrent to personalities.

As each member has the right to make any price he pleases there are no complaints on account of cutting, but only regarding the circumstances attending the cuts.

Nine-tenths of the complaints will simmer down to failures to live up frankly to the reporting plan. At first the best of men may do things they ought not to do when after work they need or want very badly, but as time goes on all will see that in the long run it is more profitable to observe the rules.

At first, and for many a month, not a member at a meeting will escape criticism. All the contracts and all the bids will be overhauled and scrutinized. The secretary present with his records will be called upon to show just what

passed through his office, and such questions as these will be asked:

"Why didn't you send in your bid sooner?"

"Why didn't you note on your bid that you changed the specifications?"

"Why did you put in a second bid?" "Why did you put in a lower bid after you got a copy of my bid?" "Why didn't you notify me of your lower bid?" "How came you to get the contract when my bid was lower?" "Why should the owner favor you?" "Is there any secret rebate or understanding between you and the owner?" And so on, and so on.

The queries are keen and searching. There is no use trying to evade answering; it is foolish to answer falsely. If a member does not disclose the facts they are sure to come out later. The buyer who gets a secret advantage never keeps it secret; he is so pleased with his own shrewdness he courts applause. If it is a purchasing agent he gets no credit for his cunning unless he tells those who employ him; nine times out of ten he will exaggerate the advantage he has gained and no little time is spent at meetings of open price associations in running down and exposing these exaggerations and false reports of agents and owners, reports often made for the express purpose of keeping contractors in a state of jealous distrust.

As a result of these open discussions members separate with full and accurate knowledge regarding conditions attending the letting of all work during the preceding month and will govern themselves accordingly.

XIX

It is impossible to meet in advance all the objections that will be urged to the plan, but some things, based on experience, may be said.

In organizing an association it is important to press the open price policy no farther than the most skeptical member is prepared to go. Adjust the strain to the weakest link.

The chances are that many present will be more or less familiar with the attempts and failures of price-fixing combinations; if so, each will have his tale of woe, how this man and that man "did not live up to the agreement," how they promised to maintain prices "and then went out after all the business in sight at any old price," etc., etc.; the complaints are as familiar as the story of an after-dinner speaker.

This condition of profound distrust is a fact to be dealt with, not ignored. It is just as well to open the explanation of the reporting plan with about these words:

"Let us assume that all you think of one another is true and that not a man present is to be trusted outside this room.

"By assuming the worst there will be no unpleasant surprise in store—events may prove we are mistaken.

"Acting upon the assumption that no man will do as he agrees unless he wants to or can't help it, let us not agree to do anything simply because we ought to, but only those things we either want to do or can't help doing.

"And when we get along a little farther and generate a little more confidence in one another we will agree to a few things we *ought* to do, but for the present, no."

XX

There was a set of men who had been in a price-fixing combination that had fallen apart on account of failures on the part of this one and that one to observe the agreement, the feeling of one toward another was so bitter it seemed impossible to induce them to adopt the open price policy, but it was done and in this way:

"Will you meet together?"

"Yes, but it won't do any good."

"Will you file with a secretary and interchange all bids and prices you make?"

"No," was the emphatic answer of a number present.

"Very well, let's see what you are willing to do; will you file your bids under seal, the secretary not to open same until contract is let?"

"See no objection to that, but what's the good?"

"Wait, will you file all contracts as finally closed?"

"Um—m—yes, for most of them are known anyway."

"Will you agree that after a contract is closed and filed all bids on that job shall be opened and discussed at the next regular meeting?"

"Yes," one keen man spoke up quickly, "for then we will at least know what each one has been doing; as it is now the purchaser tells us any old story about the bids he has and we have no way of knowing whether he is lying or not."

"Then you have made a beginning; you are going to meet together, file all bids, all contracts, and open all bids on each job after contract is closed."

"That will bring some of you fellows out into the open," one man remarked with a sneer.

"I'd like to check up some of the figures you have been making," the other retorted.

And that was as far as that particular set of men would go the first day.

The next day two or three were ready to go a step farther.

"Why not try the plan of interchanging bids before the contract is let? What difference does it make?" one urged.

"And give you a chance to cut my price? Not much."

The debate waxed strong until ended by this suggestion:

"Why waste time arguing the matter, a few of you are in favor of the open price plan, most of you are not; there is no need trying to convince those who are not; the thing to do is for those who wish to try the plan to instruct the secretary to that effect and he will interchange their bids as received but keep sealed all bids filed by members who are opposed to the plan."

Four or five then and there told the secretary to interchange their bids, and before two months had passed all adopted the plan.

It is useless to try to coerce or even urge men to adopt a plan they do not fully understand and about which they are skeptical. If they adopt it under pressure they will not live up to it, but if they fall in line of their own accord and because they do not wish to be left behind it is a different matter.

XXI

Blanks are prepared to fit the industry—one for reporting inquiries on, say, white paper; a second for reporting bids on, say, yellow paper; a third for reporting contracts closed on, say, blue paper, and blocks of same are furnished members.

Each blank should bear on its face plainly printed directions for its filling out and use.

In many industries it may be more convenient to send in carbon copies of bids and contracts.

The secretary on his part will have suitable blanks for reporting back to members bids filed and contracts closed.

All blanks should be of a size—say not larger than regular letter paper—so as to drop into a loose leaf file holder and filing cabinet. One association uses a simple folded wrapper of heavy manilla paper that has printed on it the proper form for endorsing dates of each step. On re-

ceipt of report of an inquiry it is filed in one of these wrappers and each report as it comes in and all correspondence relating to that particular piece of work go into the same wrapper and nothing else, so that in the end the complete history of the job from first inquiry to closing of contract is contained in the wrapper and abstracted on its face.

XXII

The foregoing is a brief description of the working of the secretary's office. The machinery is simple and tends to become almost automatic.

So far as daily routine of receipt of inquiries, interchange of bids and notices of contracts is concerned it can all be done by a competent stenographer, or typewritist, but the success of an association depends largely upon the tact and good judgment of the secretary.

He need not necessarily be a man familiar with the particular industry, but his training and experience should have been such as to render it easy for him to grasp details quickly, and he should be a man in whose integrity the members have absolute faith and upon whose judgment they are willing to place considerable reliance.

As he will be in the midst of every dispute that arises the outcome of differences may turn upon the tact he displays.

For the first few months he will be busy getting the members into the spirit of the open price policy; his position will be difficult for the policy is new and revolutionary, and may, for a time, result in even greater competition; members will be dissatisfied because they get no results, because prices are no better, and some may resign or talk of resigning.

Whether the association survives this formative period

will depend entirely upon those advising it rather than upon the members themselves; it is the man who has no interest in the business who is in a position to pour oil on the troubled waters.

XXIII

No association should be formed for less than one year, and members should be required to either pay in their pro rata share of the expenses for the entire year or so firmly commit themselves there will be no thought of resigning.

Men who are suffering from fierce competition are quick to come together at the call of almost anybody and ready to enter into any agreement that holds out the slightest hope of bettering their condition, but when the hope is not immediately realized in higher prices they are just as quick to drop out.

The open price policy promises no quick relief; relief in the way of better prices may be uncertain, hence it is important that an association should be assured sufficient permanency to give the new departure a fair trial, for better conditions will come, first of all, in the way of friendly intercourse and confidence in the place of jealous distrust and hatred; secondly, in the very great advantages that flow from knowing for the first time the exact conditions prevailing in the industry; thirdly, in the tendency of prices to seek normal levels and competition to lose its unfair and brutal features.

Those advantages will be realized in the order named, and it will be idle to expect any beneficial effects upon competition or prices until distrust and hatred have been eliminated; that is why it takes time to bring results. Men who say they would not believe one another under oath cannot be transformed in the twinkling of an eye; many can never

be converted, hence not a few associations will be doomed to failure from the start.

XXIV

The procedure at regular meetings of a large association should be, generally speaking:

1. The meeting of the executive committee, followed by the meeting of the association.

2. The transaction of all routine business in systematic fashion; the more the association has to do in a general way, aside from reports, bids, and contracts, the better it is, for the broadening of the scope of the organization and the transaction of general business all tend to take the edge off complaints and minimize their importance.

3. Hearing of reports from each member regarding general conditions in the industry, outlook for business, raw material market, etc., etc. In one association these reports have become so frank that each member states not only the condition of his plant as regards work in hand and ahead (facts largely known through the reporting plan), but his purchases of raw material with prices paid.

4. Complaints. Each member who has any complaint to make or questions to ask regarding bids or contracts notifies the secretary in advance of the meeting so the latter may have the required files present.

In old-line combinations men never dared mention names or say very much "for fear of disrupting the association"; when they knew agreements to maintain prices were being flagrantly violated they did not dare denounce the guilty parties, but would go on damning them behind their backs until the combination collapsed. In an open-price association the reverse of this condition prevails.

Many of the evasions of rules are due to salesmen

eager to make sales, others are due to the fault of members who know better.

But, as meeting after meeting is held, and all these practices are brought to light and discussed, they become less frequent.

The outcome of nearly every discussion of failure to live up to the spirit of the reporting plan is a promise on the part of the delinquent member to see that his company does better next month. Now and then a member who feels aggrieved threatens to stop reporting or to mark all his bids "sealed as to the ———— company," naming the offending member, which would mean that those two members would exchange no information, but the threat is rarely carried into execution.

The reporting plan is so eminently fair that men find little excuse for failing to live up to its simple provisions.

XXV

Publicity is a cardinal principle of the new competition. All that is done must be done openly.

No more barricaded doors, no more ciphers and cryptic letters, no more numbered price lists passed furtively from hand to hand, no more tame disavowals, no more tacit understandings and gentlemen's agreements—all these evasions and subterfuges belong to the past. The new competition has no use for them, they are the excrescences of the old.

In order to avoid misunderstandings by members, by customers, by the public, it is important that the constitution and by-laws be carefully drawn so as to express in full the purposes of the association and every agreement underlying its organization. This is advisable everywhere, it is doubly advisable in this country where the law regard-

ing restraint of trade is so strict and the public so suspicious.

The purposes of the organization must be so clearly expressed as to leave no room for inference, no room for argument that possibly something of an illegal or sinister character is hidden.

The fundamental propositions must be so framed that even a judge not versed in business will be able to understand the plan and plainly see that, if lived up to, good to the industry must result and that, too, without any additional act of a secret and unlawful character.

Both the safety and the strength of the association lie in publicity.

This means that, once organized, the records of all meetings, all transactions, must be so kept that they set forth accurately every act of the association that has any bearing upon prices, conditions of trade, and the objects of the organization.

If the question is asked "What did you do at a given meeting?" the answer must be found in black and white in the secretary's office; no other evidence should be needed.

Hold meetings with open doors—literally, not figuratively; invite competitors to attend as visitors, whether they wish to join or not, and urge any curious or doubting customer to come and observe what is done.

Do nothing you are afraid to record; record everything you do, and keep your records where any public official in the performance of his duties may have easy access to them. In short, preserve so carefully all evidence regarding intentions, acts, and results that there will be no room for inference or argument that anything else was intended, done, or achieved.

XXVI

Now what are some of the results?

First of all "vicious" bidding disappears. By "vicious" bidding is meant bids put in by competitors who know they stand no chance of getting the work, simply to "make the other fellow do it for nothing." Of all competition that is the meanest. No purchaser has the right to encourage it, no producer the right to indulge in it; it means the sure elimination of the weak, ultimate monopoly by the strong.

With open bidding there is the natural, the automatic tendency for prices to approach normal levels; the wide spreads so frequent under false competition—secret bidding—are minimized. There is less bidding below cost at one extreme and fewer or no arbitrarily high prices at the other. The customer is surer of fairer treatment in the long run, the producer of fairer prices. The open-price policy is both a safety valve and a governor, it works toward stability.

By eliminating secret prices it eliminates secret rebates, concessions, and graft; by bringing all dealings out into the open it ends four-fifths of the fraud and misrepresentations that now attend the letting of the simplest contract; the purchaser will no longer be able to secure a fraudulent advantage by saying he has a lower bid when he has not. In all their dealings both purchaser and producer will be more nearly on a footing of equality.

The business will be placed upon a more scientific and rational footing. Instead of competing under conditions of jealous distrust and suspicion, wasting time and money in doing things they either should not do at all, or should do with a fraction of the expenditure, members will coöperate to accomplish as a unit the things they rightfully may do.

Finally, the open price policy—the new competition, with the friendly association it involves, tends to make business life a little better worth living.

CHAPTER XI

HARMONY

I

Coöperation means a broader outlook than the mere quest of money.

It may be said once for all that no organization can live beyond the exigencies of the hour unless it has an interest above dollars and cents. The desire to make greater profits may bring men together but it will not hold them long, the motive is too sordid to encourage any large degree of enthusiasm, and without enthusiasm no movement can go forward.

Heretofore combinations, associations, pools, agreements have all been for the one object, higher prices. Men who disliked each other heartily came together for the sole purpose of making money, they were willing to swallow their aversions for the sake of a few dollars; they would lunch and dine together with a great show of friendship only to denounce each other roundly on separating.

In these combinations to advance prices the man who had a decent regard for his word was always the loser since he adhered to the understanding longer than the others.

There being nothing to hold the members together except an agreement that few intended to keep, it is not surprising the old line associations fell apart about as fast as they were brought together.

II

Men, whether in an association or not, *should* consider the relations enumerated below, but when organized they *must* consider them.

A. *Relations of members to one another.*
B. *Relations with employees.*
C. *Relations with those to whom they sell—customers.*
D. *Relations with those from whom they buy.*
E. *Relations to the public generally.*

III

If an association is small all it can do is to keep in mind and give some serious thought to the several relations named, especially to (B) relations with employees, (C) relations with customers and (E) relations to the public. It is hardly conceivable that two or three men in a given industry could come together without doing things that would affect those three classes.

If an association has a large number of members standing committees should be appointed to deal systematically with all matters affecting these relations.

RELATIONS OF MEMBERS ONE TO ANOTHER

I

Among the duties of the committee having this in charge would be the following:

(a) Gather information regarding different methods of cost-estimating used by members.

(b) Work out a comprehensive and scientific cost system, to the end that each member will charge against all work all items that should be charged.

If the association should do no more than this it would justify its existence.

In a meeting of representatives of twelve large manufacturing companies the matter of costs came up for hot discussion; it developed that *no two agreed upon all the items that should be charged against a given piece of work.*

At length one remarked,

"You see, gentlemen, most of our troubles are due to ignorance of costs; we think we are bidding a profit but it is largely guess-work."

And another said,

"If every man would figure his costs correctly and know what he is doing, there would be no need of any agreement regarding prices."

The differences of opinion and practices developed in the discussion were so surprising that a competent committee was appointed to work out a cost system applicable to the industry. At the end of about four months of inquiry and comparison of data a report was made and a schedule prepared that showed every item of cost entering into a piece of work. With that blank in front of him no member could have any excuse for omitting in his estimates legitimate items of expense; if he did so he deliberately cheated himself.

The blank contained no figures, the committee made no attempt to indicate what amounts should be charged under the various heads; the schedule was simply to make sure no proper item should be overlooked.

It was recognized that costs differ, but it was plain that actual differences under a scientific system would not be so wide as those under unscientific practices.

The adoption of a scientific system of cost accounting

means more careful bidding, and more careful bidding means more stable prices.

II

(c) This same committee may, with propriety, carefully investigate and consider the situation of each competing plant with reference to others. It is only by a careful comparison of data that it can be ascertained whether a given plant has any territory or customers that naturally depend upon it—in other words, whether it has an economic value to the community.

This investigation has nothing to do with any scheme for allotting or apportioning business; it simply seeks to get at the facts.

A plant is located, say, in Minneapolis; it is obliged to buy all its raw material in Pennsylvania; it is in competition with Pennsylvania companies that ship the finished product to the Northwest; on its face the situation seems to look desperate for the Minneapolis company, but there may be local and territorial or transportation conditions which enable it to compete with companies situated near the base of supplies.

These conditions should be inquired into and the facts brought out so that members may compete intelligently and fairly. If the Pennsylvania companies are bidding recklessly for business they are not fairly entitled to they may depress prices for a time, but in the end the waste must be recouped from the public, and if the local company is driven out the entire Northwest may feel the loss.

Such questions are large economic problems calling for depth of insight and breadth of view. The right committee could make a report that would set forth in detail the advantages and disadvantages of every member of the association, and in so far as it can legally do so it should be

the effort of the association to help each member to hold the trade legitimately belonging to it, as against unfair and destructive competition.

No action would be necessary in most cases, the mere bringing to light all facts and conditions would suffice.

III

(d) The committee would also deal with all lapses from the frankness and truthfulness that should prevail; it would endeavor to key members up to high standards in all dealings and all competitions; it would go farther and endeavor to get members to lift their salesmen and representatives to the level of the open-price policy.

All these things are of greater value to the small producer than to the large. Most large corporations have scientific cost systems and means for learning all that is going on in the country. It is the small producer who is at a disadvantage and who will reap the greater percentage of advantage from the association and the work of the committees.

The writer often hears the representative of the large corporation say:

"What have we to gain by teaching the little fellow how to run his business?"

More than one thinks; first of all the friendship of the little fellow instead of his enmity; secondly, the friendship of the little fellow's friends, and he has a lot of them; thirdly, more intelligent competition and that means dollars and cents.

RELATIONS WITH EMPLOYEES

I

Only an association can deal with the many and complex questions that arise regarding labor.

It goes without saying that if employees are organized employers *must be*—the individual employer is powerless to accomplish the things labor demands of him; he can neither raise wages nor lessen hours without the possibility of placing himself at a disadvantage as against competitors who get more labor for their money.

It is not a question of *power,* of *force,* of body against body in a spirit of hostility.

The conduct of labor unions may be so arbitrary and oppressive, their demands so unfair and outrageous that employers must organize to resist, but such fighting organizations have nothing in common with the associations recommended in this book.

Under no circumstances should an open-price association be drawn into any *conflict* with *labor,* with the *public* or with the *law.*

Should employers who happen to be members of an open-price association be involved in a controversy with labor, they must conduct their fights outside the association, the influence of the association is thrown in the direction of peace and harmony, representatives of labor are not only free to attend its meetings but should be welcomed and the logical outcome of the movement is the participation of employees in many of the deliberations of the association.

It may be stated with little danger of contradiction that *no association that has anything to do with costs and prices*

is complete without the participation of labor, for labor is cost.

However unjust and arbitrary some of the demands of labor may be, they are not all so; however extreme some of the theories of the modern social reformer may sound, many of them are in process of realization. It is the business of the far-sighted employer to meet all demands for reform in a spirit of sympathetic coöperation instead of a spirit of stubborn opposition.

II

The history of labor is one long story of contest and conquest. There have been set-backs in this country or that, in this century or that, but the onward movement has been checked only to gain greater headway.

It is disheartening to see how stubbornly employers the world over have resisted this movement, fought it at every turn, blocked it with laws, met it with armies—and all to what purpose?

At most the postponement of the inevitable for a half century or so, and the creation of a class hatred and rancor that will not die for generations to come.

One of the objects of the new competition is to alter these conditions. In theory the employer is, and in the end he must be *in fact* in the attitude of the master workman who uses his brains and experience to direct those under him in such a way that the best interests of all will be served; to do this successfully he must be sure of the hearty coöperation of all, and he cannot be sure of that unless all are welded together in one association instead of being, as now, members of opposed organizations or unions.

In taking this far look ahead the open-price association

does not mean a drift toward socialism, which involves the intervention of the state, but rather toward a higher and purer individualism, an individualism developed and restrained in voluntary organizations, with a minimum of intervention on the part of the state.

Coöperation stands midway between the rank selfishness of individualism and the ultra-altruism of socialism; it offers a practical middle ground between the two extremes; rightly developed it will suppress the evils of the one and yield the benefits promised by the other. In a sense it is the only refuge against Socialism.

III

There is much of a practical nature the open-price association may accomplish through its committee on relations with employees.

Reports should be called for from each member regarding:

(a) Safety appliances in use.

(b) Hygienic and sanitary conditions, including recreation facilities.

(c) Sex, age and nationalities of employees.

(d) Wages paid and hours of labor.

(e) Provisions for injury, disability or death, and for pensions.

IV

Ten years ago nearly all employers would have considered inquiries along the above lines the acme of impertinence; to-day there are comparatively few large corporations that do not spend time and money in systematic investigation and improvements in those directions.

A few years have worked great changes in conditions and public sentiment and much of the credit is due the large corporation—the individual employer lags far behind.[1] As a rule he has neither the time nor the disposition to consider broadly the relations between the industry and the labor employed therein; the problem is far beyond him. Only a large corporation or an association has the necessary facilities for making investigations and experiments.

It is needless to say that money spent in these ways is money saved; the efforts are sound and business-like rather than philanthropic. In other words *it pays to do all these things.*

A safety appliance may be a better investment than the machine to which it is applied. A hospital returns its cost many times over. A play-ground is the cheapest realty an employer can buy.

[1] Mr. John A. Fitch, author of "The Pittsburgh Survey," in the volume devoted to the Steel Workers, says: "With the appointment of a central Committee of Safety, in April, 1908, the United States Steel Corporation entered upon an energetic campaign to bring safety standards of all its subsidiary companies, not only up to the levels set by the most progressive plants among them, but to overhaul all plants from the standpoint of protective machinery, to define safety specifications for all new equipment, and to work out new methods of prevention. Experts employed by the constituent companies are devoting their whole time to studying the problem. A system of inspection has been introduced, and the inspectors in each plant make regular reports, with recommendations, to those in authority. In some of the mills committees of workmen coöperate," then, after speaking of the difficulties in the way of needed changes, Mr. Fitch goes on, "No large corporation is manifesting more intelligent determination in regard to accidents than the United States Steel Corporation. Its safety men have a big work before them, one which is rendered trebly difficult by the nature of the industry, by the speeding up and the twelve-hour day, and by the years of inexcusable negligence and downright disregard of human life which characterized the steel industry in the past." Pages 69-70.

See also, "Safety Provisions in the United States Steel Corporation," by David S. Beyer, Chief Safety Inspector, American Steel and Wire Co., printed as Appendix III in Eastman's "Work Accidents and the Law."

Good wash-rooms, good dressing-rooms, good work-rooms, good eating rooms, good rest and recreation rooms, in time will be considered just as essential as good floors, good walls and good roofs.

It is difficult, if not impossible to force all these things by law against stubborn opposition, but associations can teach men their necessity, their value, and dissipate prejudice and ignorance. The best way to teach is by example and results; when one employer hears another tell what he has done and the good results he has obtained the words sink deep and prove fruitful; they are worth a hundred arbitrary factory inspectors.

V

Systematic inquiries should be made and results tabulated regarding ages, sex and nationalities of employees and, in this connection, wages paid and hours of labor.

At present this information in a general way is given reluctantly to census takers and other government agents.

Strange, is it not, that keen business men should not see the advantage of doing for themselves, and doing thoroughly, what the government is doing imperfectly and clumsily?

Nothing is more certain than that the ages, sex, nationalities of employees with wages paid and hours of labor will in time be systematically and accurately ascertained in not only every industry but in every unit of industry and published. The time is rapidly approaching when neither the public nor those directly interested—the employers themselves—will be satisfied with the generalizations of census reports, with totals, percentages and averages, which mean a good deal to the country as a whole but very little to John Smith in the conduct of his particular business. What John Smith wants to know is what his competitor in

the next town pays and the labor he employs, whether it is convict labor, child-labor, female labor, or competent able-bodied-man labor.

As a matter of fact employers suffer from census statistics, for few things are more misleading than large generalizations and huge totals; everybody knows how they are used on both sides of every argument—for and against high tariffs, for and against higher wages, for and against shorter hours, child-labor, employment of women, etc., etc. They mean little, prove nothing. When an employer is urged by argument or law to improve conditions in his shop he does not go to census publications or bureau reports, he asks himself the one vital, selfish question, how can I improve conditions without losing money? And that question he cannot answer without intimate knowledge of what his competitors are doing and proposing to do. If all act together a great deal can be done without dislocating trade, but if one is forced by law to take the initiative in advancing wages, shortening hours, or improving conditions he may find himself in a position where he can no longer compete on a footing of equality. True, the bettering of conditions means greater production, but the isolated employer is afraid his cost of production will advance beyond his competitors', and he dares not risk the change.

Labor unions in their fights for better conditions are constantly met by the plea that if they advance wages in one locality and not in all they will ruin those who pay more, and they are urged not to insist upon an advance in one place unless every competitor is compelled to pay the same. In other words the employers ask the unions to do for them what they by coöperation should do for themselves—bring about fair conditions.

VI

In equipping factories with safety appliances many employers have already gone far beyond the requirements of any law, and in their discussions of the wisdom and economy of improved sanitary, hygienic, rest and recreation conditions progressive employers are far in advance of legislation. But these same employers, advanced as they are along certain lines, lag behind when it comes to dealing in the same big way with wages, hours of labor, ages, sex and nationalities of employees; they lag behind because these questions cannot be dealt with in a big way without coöperation. They may be dealt with after a fashion by laws which compel all to do certain things, but that is a crude way of working out reforms.

Law is a rule of conduct imposed by a legislative body made up of men, not one of whom may have the slightest first hand knowledge of a given industry, yet they are forced to say how the industry shall be conducted—why? because the men in the industry will not get together and frame their own rules of conduct.

In certain branches of the steel industry the twelve hour day prevails. This means that in certain continuous processes the men on each shift are compelled every two weeks to work straight through twenty-four hours.

Andrew Carnegie in 1886 wrote, "At present every ton of pig iron made in the world, except at two establishments, is made by men working in double shifts of twelve hours each, having neither Sunday nor holiday the year around. Every two weeks the men change to the night shift by working twenty-four hours consecutively."[1]

[1] *The Forum,* Vol. I, 1886, p. 544. This entire subject is ably discussed by Mr. Fitch, in his book, "The Steel Workers"; see especially Chapter XIII.

Conditions have improved considerably since 1886, but the twelve-hour day and the twenty-four hour turn still exist.

A twelve-hour day is bad enough, a twenty-four-hour turn every two weeks seems almost inhuman, but these are conditions that have grown up with and out of the industry. No one in particular is to blame. The men themselves have opposed changes for fear the changes would mean less money in the end.[1]

In 1910 the Brotherhood of Locomotive Engineers adopted the following with reference to shorter hours:

"Pertaining to the hours of service of 16-hour law, with proposed amendments, and a substitute to reduce the hours to 14, your committee examined the chairmen of several important systems and questioned many delegates from different sections of the country, and find that while there is a general desire for reduction of the hours of service, several favoring a reduction to 10 and even 8 hours per day, the majority are opposed to changing the hours from 16 to 14, for the reason that it would injure a greater number of engineers than could possibly be bene-

[1] Years ago the Amalgamated Association of Iron and Steel Workers adopted a very short-sighted policy. "As improvements in steel mill construction made it possible to finish a turn's work in a shorter time than twelve hours, there came to be periods of idleness between the shifts. This is undesirable in a mill of this character, for sheet-iron is rolled so thin that good results can be obtained only when the rolls are expanded by the heat. The rolls are so shaped that when cold they cannot turn out a steel of uniform thickness; consequently, after a period of idleness hot scrap is sent through them until they reach the correct expansion. To avoid these periods of idleness, the manufacturers tried to introduce an eight-hour day. This was resisted by the union. In 1883 it was reported to the Amalgamated Association that Moorhead, McCleane & Company, of Pittsburgh, were about to force the eight-hour day upon their men. This was cited as an example of the 'encroachments of aggressive and designing capital,' and the executive committee ruled that under no circumstances should a mill go on three turns," John A. Fitch, "The Steel Workers," pp. 93-94, referring to Journal of Proceedings of Amalgamated Association, 1883, p. 171. In spite of the action of the executive committee of the union some of the mills did go on eight-hour turns, and in 1884 the association revoked the charters of two of the local lodges for not resisting. See Journal of Proceedings, A. A. I. and S. W., 1885, p. 1547.

fited thereby, resulting, as they fear, in unsettling conditions, changing runs and lay-overs, reducing incomes, and perhaps breaking up homes."

VII

The public do not fully understand these things; it thinks the fight for an eight-hour day is a fight between employee and employer. It is not; it is a fight by both against conditions.

The day before these words were written the writer heard a prominent steel man say in a meeting, "The eight-hour day with no reduction in wages will be the best thing that can happen in the business, and I am ready for it if you are."

Others expressed their hearty assent, but the practical question was how to bring it about, as one man said,

"We represent only one-third of the industry, and anything we might agree upon wouldn't bind the others."

"If they were all in our association," the first started to say.

"Then it would be different," a member interrupted.

The matter under discussion was government work and the proposition of the government to approve no contracts that did not contain an eight hour clause.

"That means," as one man put it, "if any of the material we put into the government work is made by men working more than eight hours the contract is void; where is the thing to stop? Ore goes into the blast-furnace, and pig iron goes into the steel, the steel goes through the rolling mills—mine, furnace and rolling mill work twelve hour shifts; if you take a government contract for a ton of plates you will have to work eight hour shifts from mine to rolling mill."

An extreme, but entirely logical illustration, and one that shows the absurdity of trying to force the eight hour day by so indirect a method as introducing such clauses in public contracts.

VIII

The eight-hour day is an economic proposition with large sociological and ethical bearings,—as such it demands rational consideration and scientific treatment. Above all it is primarily a question for the men engaged in the industry—employers and employees—to consider and settle, and neither side is in a position to consider, much less dispose of the matter without associations so large and strong that whatsoever is decided as for the best will be adopted by all.

The law in this country finds it difficult to deal with particular industries; by a stretch of constitutional construction it does reach certain extra-hazardous occupations, but it cannot arbitrarily single out this or that industry and establish the eight-hour day even though employers and employees say they want it. One recalcitrant employer or employee, invoking his constitutional rights, may annul the law.

How much simpler for the law to first try the experiment of encouraging the formation of associations under conditions of publicity and proper supervision, and leave to them and their employees the working out of some of these problems.

At the moment the law takes the untenable position of positively discouraging the formation of associations of employers, and yet lays down requirements that can be intelligently met and fully complied with only by coöperation and united action.

This is illustrated in the manner in which the law tries

to deal with the railroads of the country; they are not exempt from the Sherman law, and yet the practical enforcement of the Interstate Commerce law together with actual conditions *force* the roads into traffic associations the *direct object* of which is to *agree upon and absolutely control* freight and passenger charges.

The roads could not comply with the inter-state commerce law and the orders of the Inter-State Commerce Commission without combining and coöperating together.

It is equally true that corporations and individuals engaged in other industries cannot meet conditions that confront them and comply with laws directed against them without combining and coöperating together.

PROVISIONS FOR INJURY, DISABILITY OR DEATH, AND PENSIONS

I

Under this head associations organized along the new lines will have to consider some of the most vital and interesting problems ever presented to the *practical* mind of man, and again *only associations* can adequately discuss them, individuals may form theories, but they are apt to be partial and imperfect and even if sound the individual lacks power to put them in practice.

II

What does an EMPLOYER owe an employee who is injured, disabled, dies or grows old in service? That is the way the question is ordinarily put and that way of putting it is the cause of nearly all the confusion of ideas and laws that prevail.

The question so put raises an *ethical* problem, whereas the problem is essentially *economic*.

The question is not "What does the *employer* owe an employee?" but *"What does the INDUSTRY owe the employee who is injured, or disabled, or who dies or grows old in service?"*

III

The employer *owes* the employee only what he agrees to pay him, and the rate of wages is largely fixed by conditions over which the individual employer has little control.

But the obligations of the industry toward men who give their health and lives to its advancement are very different and it is these obligations society and, in a measure, the law are beginning to recognize.

What stands most in the way of their recognition is the prevailing idea that it is the *employer,* the individual who happens to be at the head of the business, who owes the obligations as *moral* duties.

The law of torts as between master and servant is based upon this theory of *moral* responsibility, of *personal blame,* for the accident, the injury, or death. And as the master is not to blame for a servant's growing old in service, the law has never given the employee compensation for old age, though so far as he is concerned old age may be more disastrous than the loss of both legs—in the end it is equivalent to death, as regards productive effort.

The very phrase "Employer's liability" which heads all chapters on the subject in law books shows the personal, the ethical character of the responsibility assumed to underlie the claim for compensation.

According to the common-law the employer is liable only for injuries caused by his own negligence, direct or

indirect, and the master may be negligent, but if the servant's own negligence contributes to the accident or injury he cannot recover.

Later[1] it became the law that if one servant is injured by the negligence of a fellow servant he cannot recover. This arbitrary and artificial ruling grew out of the theory of personal responsibility and it found many of its modifications in refinements upon that theory—such as that if the master were negligent in the employment of an incompetent servant and the damage were caused by such incompetency there might be a recovery, unless the injured servant knew of the other's incompetency and "assumed the risk," etc., etc.

In England and in many states in this country the "fellow-servant" doctrine has been modified or abolished by statute. Congress has passed laws concerning it for the protection of employees of inter-state carriers and of departments of the government.

Unhappily all legislation on the subject is based upon the supposed moral responsibility of the employer; the subject is still debated as if it were an issue between individuals; not a little of the ill-feeling that exists between employers as a class and employees as a class is due to this fundamental misconception of the true relationship of labor to its industry.

IV

If a man is injured while in the employ of John Smith there may or may not be a moral responsibility on the part of Smith, who may or may not have been at fault personally, but whatever his moral or ethical responsibility to the injured man, his *economic* relation remains the same.

[1] This doctrine had its origin in this country in Murray *vs.* So. Car. Rd. Co. 1841, 1 McMull. L. 385.

Whether Smith carelessly hits one of his men on the head with a hammer, or whether a hammer accidentally falls from the floor above and occasions the injury makes all the difference in the world with the moral responsibility of Smith, but does not alter one iota the economic relation, which is that of a man working in a given industry, and an injury in the course of the employment.

In the one case the law says Smith is liable to the man for all damages sustained; in the other neither he nor anyone else is. If the man is paralyzed from the blow and has no savings the community accepts the burden and supports him for life in a poorhouse.

It does not take much of a mind to see there is something wrong here.

Why should not the industries that reap the benefit assume the cost of caring for their human dèbris?

V

The world is progressing and of late the economic view is obtruding itself in laws that depart so radically from the old notions that it is surprising legislators, and keen observers do not see that the entire theory of employers' liability is overturned.

One English writer on the old theory does mournfully remark, "By the Employers' Liability Act 1880, such exceptions have been grafted upon the common law, and by the Workmen's Compensation Act 1906, principles so alien to the common law have been applied to most employments that it is impossible now to present any view of this branch of the law as a logical whole."

What a confession! That the law has lost its logical and scientific side because it has yielded to the dictates of humanity! How much more courageous to doff one's coat

and set about ascertaining why the law has changed, and find the thread of logical development which *must* run through all changes.

As a matter of fact the law of negligence has been changing for at least a generation, it has changed greatly in the recollection of the writer, it changed from year to year while the writer was actively defending personal injury cases, and it changed so fast it was difficult to keep up with the Courts.

With few exceptions the changes were in the direction of broader liability and more liberal compensation.

Courts still cling to the old theory of personal responsibility, resorting to sophistry to make it appear the employer was negligent,—i. e., morally responsible—when he may have had no more to do with the accident than a man in Mars.

Legislatures pass this or that modification of the common law, but always on the old assumption of negligence direct or indirect.

Neither courts nor legislatures realize they are awarding damages upon an entirely different theory, the theory of the *liability of the industry,* but things have gone so far now that the true theory must be recognized or in truth it will be impossible "to treat this branch of the law as a logical whole." [1]

[1] "The trend of recent legislation and attempted legislation throughout the country, until the introduction of so-called compensation laws, has been to *make the master liable for all accidents that arise in the business, due to negligence of anyone in his service; to change the burden of proof* so *as to require the master, where defects exist, to show that there was no negligence,* and also to change the burden of proof so as *to require the master to show that the injured employee was negligent; to remove all limits* whatsoever that exist upon his liability, leaving him open to such damages as the juries may see fit to assess, without any certainty of what such damages may cost him at any moment; *to require all questions of negligence to be left to the jury; to prohibit any contracting out of such* liability; and *to increase the body of law aimed directly at preventing accident.*

VI

The modern, the economic theory is based upon the proposition that,

Each industry must bear all its costs, direct and indirect, and cover those costs in its charges.

From a purely economic point of view the compensation of an employee for damage sustained in the course of his employment is not a question of *legal* or *moral* liability, but wholly a question whether *all* damages incidental to the operation of a given industry shall be borne by the industry and covered in its charges, or whether only a certain portion shall be borne by the industry and the balance by the community.

The damage cannot be dissipated, it is a positive, physical fact; if a man's arm is gone, it is gone, and no amount of learned argument as to who is to blame for its going will restore it.

The legal debate may go on, as it often does, for years from court to court, up and down, and back again, but all the time the arm is gone, *some one is bearing the damage;* the industry, or the individual out of his savings and fu-

"Verdicts have been growing in amount until some have become greatly excessive, though others are inadequate.

* * * * * * * * * * *

"There is no doubt that under the development of the negligence law the present system has become intolerable and entirely fails in its purpose, in the greater number of cases, of compensating the injured employee, or administering justice in practice or according to any reasonable theory.

"This negligence basis for compensating industrial injuries has not only been tried and proved a failure in the United States, but it has proved to be a great factor in widening the breach between employers and employees, creating hardship on both sides with resulting bitterness. This hardship has been spread throughout the wide area involved in industrial and constructive undertakings and has consequently affected an enormous proportion of our citizens."

From Report of Employers' Liability and Workmen's Compensation Commission, 62nd Cong., 2nd Session; Document No. 338.

ture earnings, or the community in charitably supporting the individual if he is rendered helpless.

Heretofore, where the employee could not show that the employer was personally to blame, directly or indirectly, the community has either meekly accepted the burden or brutally compelled the employee to bear it if he had the means saved up, even to the extent of degrading him and his family to the level of beggars and paupers.

VII

More enlightened views are finding acceptance. The public is beginning to see that in the last analysis the community as a whole must bear all its burdens, that while one man may escape responsibility he can do so only at the expense of some one else; that if in a given industry so many men are killed and injured each year the loss is the loss of the community no matter how the question of responsibility is adjusted. And in addition the community now spends an enormous amount of time and money in supporting courts to settle questions of responsibility between individuals—the settling of which does not lessen by a penny the damages sustained.

During the year ending June 30, 1911, there were 3,163 railroad employees killed and 46,802 injured. Conditions will improve but there always will be a certain number killed and injured—*these are factors in the cost of railroading,* just as much so as injuries to road-bed and equipment.

It would be interesting to know how many of the deaths and injuries resulted in claims and law-suits—it is safe to say a great majority.

But whether the men injured were at fault or the companies does not make the slightest difference *from an eco-*

nomic point of view, the cost to the community is the same; the question is, who shall pay the cost?

And to that there can be but one answer—*the industry.*

The matter is one for actuaries rather than lawyers, for scientific solution rather than a law-suit.[1]

VIII

We in the United States have made money so fast and human life has been so plentiful and so cheap that we are *far behind nearly every civilized country* in dealing with the great problems of workmen's compensation and age pensions.

Compensation laws have been passed in the following countries:

Austria	Transvaal
Belgium	New Zealand
Denmark	New South Wales
Finland	Queensland
France	South Australia
Germany	Western Australia
Greece	Italy
Hungary	Luxemburg
Great Britain	Netherlands

[1] "According to the mortality statistics for 1908, published by the U. S. Census Bureau, there were 19,970 fatal accidents to wage earners in that year. Mr. F. L. Hoffman estimates the number of non-fatal accidents during the same year at 2,000,000. Mr. Seager estimates that there are not less than 30,000 fatal accidents among wage earners every year in this country; as a result of which 20,000 families are reduced to destitution; and that, in consequence of these accidents, some 15,000 widows and 45,000 children are forced to accustom themselves to a hand-to-mouth existence, which necessarily crowds employments where competition is keenest and wages are lowest."—"Old Age Dependency in the United States," Lee W. Squier, p. 26, citing "Social Insurance," by Henry R. Seager, and Bulletin of U. S. Bureau of Labor No. 78, September, 1908.

Alberta	Norway
British Columbia	Russia
Quebec	Spain
Cape of Good Hope	Sweden

and in a few of the States in the United States.[1]

The failure of the *personal responsibility* theory is conceded in the following brief summary of conditions that led to the English Employer's Liability Act of 1880 and the Workingmen's Compensation Acts of 1897 and 1906:

"So long as an industry was conducted on a small scale, and the master worked with his men, or was himself the manager, its (the common law regarding negligence) hardship was perhaps little felt; his personal negligence could in many cases be established. But with the development of the factory system, and the ever-growing expansion of the scale on which all industries were conducted, it became increasingly difficult to bring home individual responsibility to the employer. As industry passed largely into the control of corporations, this difficulty became almost an impossibility. The employer was not liable to a servant for the negligence of a fellow-servant, and therefore, in most cases of injury was not liable at all. It is not surprising that the condition of things thus brought about, followed by the growth of modern industry and partly by the decisions of the courts, caused grave dissatisfaction. The justice of the doctrine of common employment was vigorously called in question. In the result the Employer's Liability Act of 1880 was passed."

This Act did not meet the situation. "In 1897 Parliament took the first step in what has been a *complete revolution* in the law of Employer's Liability. Up to that year,

[1] A valuable examination of the European compensation systems appears in the twenty-fourth Annual Report of the (Federal) Commissioner of Labor, and of various State Compensation Acts in Bulletin 92, etc., of the Bureau of Labor.

as has been seen, the foundation of a master's liability was negligence, either of the master himself, or, in certain cases, of his servants. But by the Workmen's Compensation Act, 1897, *a new principle was introduced* whereby certain servants in certain employments were given a right to compensation for injuries, *wholly irrespective of any consideration of negligence or contributory negligence.* As regards such servants in such employments the master was in effect made an insurer against accidental injuries."[1]

IX

As the doctrine of personal responsibility disappears the economic theory of insurance naturally makes its appearance.

Germany has a compulsory system of state insurance which protects practically all classes of workmen except domestic servants and artisans working on their own account. "The provision of compensation for accidents falls entirely upon employers, and in order to lighten the burden thus falling upon them, and at the same time to guard against the possible insolvency of an individual employer, associations or self-administering bodies of employers have been formed—usually all the employers of each particular branch of industry in a district. These associations fix the amount of compensation after each accident, and at the end of the year assess the amount upon the individual employers. There is an appeal from the association to an arbitration court, and in particularly complicated cases there may be a further appeal to the imperial insurance department." [2]

[1] From Encyclopedia Britannica, Eleventh Edit., 357. This same article also contains brief summaries of the laws of some of the different countries.

[2] "A German laborer may begin life attended by a physician or

The voluntary coöperation of all the employers is of interest, and shows the necessity of the formation of associations to work out these large economic problems.

In Austria there is compulsory insurance administered by special insurance institutions, each embracing particular classes of industries or workers. "The institutions are managed by committees, one-third of the members of each

nurse paid by the State; he is christened by a State clergyman; is taught the rudiments of learning and his handicraft by the State. He begins his apprenticeship under the watchful eye of a State inspector who sees that the safeguards to health and limb are faithfully observed. He is drafted by the State into the army, devoting two of his best years to the drill sergeant. He returns to work from the rigor of this discipline; the State gives him license to marry, registers his place of residence, and follows him from place to place wherever he moves. If he falls ill, his suffering is assuaged by the knowledge that his wife and children are cared for, and that his expenses will be paid during illness, and he spends his convalescence in a sumptuous State hospital. If he falls victim to an accident, the ample insurance, even if he be permanently injured, is a balm to his suffering. If he unfortunately becomes that most pitiable of all creatures, a man out of work, city and State unite to find or make work for him. If he wanders from town to town in search of work, the cities through which he passes offer him free hospitality. If he wishes to move to another part of his town, the municipal bureau will be glad to help him find a house, or even lend him money to get one of his own.

"If he is in dispute with his employer, the Government furnishes a court of arbitration. If he is sued by his master or wishes to sue him, the State has provided a special industrial court. If he is in trouble the city places a lawyer at his disposal.

"And if by rare chance, through the grace of the State's strict sanitary regulations and by careful living, he reaches the age of seventy, he will find the closing day of his life eased by a pension, very small, to be sure, but yet enough to make him more welcome to the relatives or friends who are charged with ministering to his wants.

"Two hundred thousand dollars a day is the price that Germany pays for this system of industrial pensions alone. More than 16,000,000 workmen are insured under the accident, old age, and sickness acts. This does not include the vast horde of officials who are pensioned in army and navy, preachers, teachers, judges, the national and local civil lists—policemen, firemen, janitors, and all the rest. There is only one considerable class of workers left out—the private salaried employees—such as clerks, stenographers, etc. There is a law now in the Reichstag extending the pension acts to this class. Then only a minority of the 65,000,000 inhabitants will be without the benefit of some public stipend. Germany is the pensioner's paradise."—*World's Work*, June, 1912, p. 148.

committee being chosen by the Minister of the Interior, one-third by the employers and one-third by the workers."

France and Italy have had systems of compulsory state insurance since 1898. Norway and Holland also require insurance.

In Denmark, Spain, Sweden, Russia and Belgium employers may relieve themselves from some or all of the provisions of the liability acts by insuring their workmen.

The old theory of moral responsibility with its personal liability doctrine has influenced the passing of much of this legislation and influenced it detrimentally; the true theory of economic liability is not explicitly recognized, yet every law providing for compulsory insurance, or compensation irrespective of question of negligence of employer must rest on that theory and *that theory alone.*

Such are some of the wonderfully interesting problems it is the privilege and duty of associations to consider.[1]

X

Much of what has been said applies to the establishing of disability and old age pensions.

Some industries consume life faster than others; the cost of human beings is as legitimate a charge as that of coal.

The charge for depreciation is a constant and important element of cost in every industry. In addition to depreciation every mining company charges off each year a certain amount based upon the estimated exhaustion of its mines.

[1] The subject of compensation for injuries is now before Congress in concrete form in the Sutherland bill. At least one open-price association has taken an interest in the framing of that act, for while it applies only to inter-state carriers, it is recognized that the law will probably be used as the model for many state laws—laws certain to be passed within the next few years.

These are the A, B, C, of cost accounting. Why is it not of equal importance to the community that every industry should set aside each year the proper amount to take care of aged employees?

If the industry itself is not large enough or long lived enough to do this it should be compelled to participate in some insurance plan operated under the sanction of the government.

XI

As regards economic thought and progress this country occupies a position of isolation from the rest of the world, the isolation of arrogant prosperity.

We are so rich we don't care—that is the trouble. "Why should we bother about the aged, the feeble, the helpless, when we have more men than we need, more money than we want, more resources than we know what to do with? If the old man isn't rich it's his own fault."

That is our attitude—the callous indifference of rapidly acquired wealth.

But when we consider the long and careful thought other and poorer countries have given these great economic problems, the sacrifices they have made in contributions and taxes to provide funds for the support of the maimed and helpless, we cannot but feel humiliated. It is humiliating to realize we are nearly a century behind Russia.[1]

[1] "It seems remarkable that the United States, which has led the world in compulsory education at public expense, should be far behind other countries in making provision in the law for the support of worn-out and aged teachers. Russia established such laws in 1819; Saxony, in 1840; England, in 1848; France, in 1858. Other countries in which laws prevail are Ireland, Spain, Servia, Italy, Austria, Belgium, Sweden, Norway, Finland, Australia, Japan, Mexico, Chile, Argentine Republic, Ontario, Quebec, and nearly all the cantons of Switzerland."—"Old Age Dependency in the United States," Lee W. Squier, p. 139.

We have paid out over four billions of dollars—$4,230,380,730—in pensions to soldiers, sailors, marines, and their widows and children,[1] but this prodigality has been inspired by political and patriotic notions rather than sound and rational economic theory.

An old man is an old man, with a stomach to feed and a body to clothe, whether an ex-soldier or an ex-cabman; a widow is a woman, whether the widow of a man who was shot in battle or one killed in the service of a railroad.

The final justification for old age and disability pensions lies in the needs of the beneficiaries, the character of the occupation is of incidental importance.

Cities have done something, but not very much, toward working out pension schemes applicable to limited classes of municipal employees, mainly police and fire department—always first and foremost *classes that have votes.*

A few corporations have taken up the matter in a more or less tentative way, but the following summary made as the result of most careful inquiries, shows how little has been accomplished:

"It is to be regretted that only about a score of the thousands of manufacturing enterprises in the United States can be included in this summary of those who have crystallized thought for the relief of worn-out workmen.

"In nearly every instance letters from the managers who have furnished information concerning pension schemes indicate that the efforts at relief have been dictated as largely by economic considerations as by altruistic. Leaving worn-out, incapacitated men on the pay roll is an economic waste. To turn such adrift is not humane and exercises a depressing influence upon workers still in the prime of life.

"Many corporations report that individual provisions have been made for worn-out, or incapacitated workmen—

[1] Report of Commissioner of Pensions, 1911, page 11.

each case being dealt with on its merits. This plan, however, is recognized by advanced thinkers in the employers' domain as open to many serious objections—the principal of which is the impression among employees that favoritism and partiality may determine the fact and amount of pension, which impression seriously affects the contentment, loyalty, and industry of workmen growing old in the corporation's service.

"The few systems of pensions that have been devised by industrial corporations are almost without exception inspired by economic motives. These systems are usually accepted by the employees with favor, the pensions being recognized as in effect deferred wage dividends available in the event of incapacity or old age. Inquiry among employers and employees in corporations in which the pension system is recognized and operating sustains the *a priori* argument that the pension system has already done much towards bringing employers and employees together in the recognition of the principle that the interests of both classes are identical, thereby reducing the likelihood of discontentment, strife and strike, and cultivating harmony, loyalty and efficiency."[1]

There can be no question that the adoption of compensation and pension plans will go far toward bringing about the *integration* of labor urged in a subsequent chapter.[2]

XII

In this connection it should be noted that the payment of old age pensions *by the state is not a logical development* of the modern theory that each industry should take care of its costs.

[1] "Old Age Dependency in the United States," Squier, pp. 105-6.
[2] See Chapter XVIII.

The government should compensate *its own* employees for injuries and pension them when old and infirm, but why should it compensate and pension *my* workmen, or the employees of the Standard Oil Company, or the Pennsylvania Railroad?

Everybody sees that compensation for injuries should be paid by the industry that gets the benefit of the services and occasions the injury; is it not equally plain that the industry that consumes a man's youth and vigor should take care of him in his old age?

The proposition is too plain to call for discussion yet many public men support the suggestion that the government should pay old age pensions.

It is a purely socialistic proposition, and weakly begs the question of real responsibility and scientific adjustment.

It is not easy to work out a scheme whereby industries that may go out of existence or become bankrupt shall establish the proper fund for the care of their aged employees, and it is easy to call upon the government to do what the industries should do, but because the problem is a difficult one, the solution is all the more worthy the minds of able and disinterested men.

The radical political leader sees an opportunity to curry favor by adopting the socialistic plan since it relieves employers of responsibility and puts employees on the pay-roll of the state, but progress in that direction is attended with grave consequences; the man who takes the first step cannot consistently refuse the adoption of the entire socialistic program.

XIII

No man should be permitted to employ another without providing for all the contingencies of the employment, nor should labor be permitted to bargain away insurance fea-

tures for more money in hand. The intervention of the government is necessary for the establishment and protection of the necessary fund, but the details can best be worked out by associations of employers and employees.

While the individual employer in a given locality may with reason object to this or that charge against his business because it places him at a disadvantage in competition with others who do not include the item in their costs, all objections vanish when *all in the industry* are obliged to make the same allowance, and far-sighted employers should welcome any plan or law that would reduce an uncertain element in their business to a certain.

Industrial progress must mean the gradual elimination of the speculative, the gambling element in business, the gradual substitution of carefully and scientifically calculated factors in costs for prevailing hazards.

The parties interested must work out their plans; it is folly to leave this to committees of Congress and legislatures, to men whose first interest is political rather than economic.

And only associations covering substantially entire industries can do the work properly.

The steel industry should not wait for the twelve hour day to be condemned by some drastic law, the men who know the industry—employers and employees—should get together and devise their own plan for meeting the situation and then appeal to Congress only in the contingency that some company or companies will not voluntarily carry out the reform.

The question is a practical one demanding the attention of practical men, but most of the agitation at the moment is by politicians, and the entire industry is on the defensive, it is being placed in the false attitude of opposing much-needed reforms.

As it is now, representatives of employers appear be-

fore congressional and legislative committees and fight representatives of their employees, they are at swords' points, they agree upon nothing, they eye each other with distrust, each is ready to oppose everything the other suggests.

It should be the aim of the open-price association to better these conditions, to make it possible for committees of employers and employees to work together with one end in view, the helping of both.

CHAPTER XII

RELATIONS WITH CUSTOMERS

I

There is just as much "brutal" buying as there is "brutal" selling—perhaps a little more, since three times out of five it is the buyer who has the seller at his mercy rather than the reverse.

One has but to note the relative attitude of shop-keeper and customer; the obsequiousness of the tradesman is proverbial, he solicits, begs, implores custom; he dares not resent a harsh word lest he lose favor, his salesmen are trained to keep silent under insult. On a bargain day watch the angry, struggling mob on one side of the counter and the pale, tired salesgirls on the other—is the mob human?

It matters not how small or how large the transaction, the buyer knows he has the advantage, he does not hesitate to say "money talks."

Now and then conditions favor the seller and he can be as independent as he pleases, but these golden periods are of short duration; if buying does not fall off, the inrush of new vendors, attracted by favorable conditions, soon restores the old state of dependency.

In a given locality there may be so much building that all the carpenters, masons, brick-layers, painters, etc., are employed and dictate terms, but most of the time the man who wishes to build can make contracts that result in losses to those who undertake the work.

II

When it comes to sheer brutality is there any worse than that of the man who "beats" a contractor down until he knows the poor devil cannot get out even and then holds him to a losing contract?

That is common custom under the old competition.

One day a young man who had made millions—and boasted of it—pointed to the tiled roof of his new house and said, "The fellows from San Francisco who did that lost three thousand dollars on the job."

"Then your house is not paid for?"

"Every dollar."

"Except three thousand on the roof."

"I paid them all their *contract* called for."

"But not all their *work* called for."

"Hah! I don't see it in that light."

"And never will—that's the sad part of it."

III

Brutal buying is manifest in so many forms. Railroads and large corporations insist that work shall be subject to the arbitrary inspection of and satisfactory to their own engineers; while most engineers are both able and fair, their interest is that of the companies, and not a few feel they can best demonstrate the value of their services by getting as much as they can out of contractors who are helpless.

This is a one-sided arrangement imposed upon the seller by the buyer. It is a manifestly unfair arrangement. And it is an arrangement that the buyer in the end pays for in one way or another. Where engineers have the reputa-

tion of being arbitrary and unreasonable, bids and prices are made accordingly.

The following illustrates the argument:

"The Company reserves the right to suspend operations on the work under this contract or any particular part or parts by giving the Contractor twenty (20) days' notice, and in the event of such right being exercised, the engineer shall grant to the Contractor an extension of time equivalent to the time of suspension of work. It is further understood and agreed that on such suspension the Contractor may have the option to close and settle up for the work done *according to the estimate of said engineer;* such suspension or settlement of the work, however, *shall not entitle the Contractor to any claim for damages;* or if the Company shall postpone or suspend the work under this contract *indefinitely* or *altogether, which it reserves the right to do,* then in that case the engineer shall prepare a final estimate of the value of the part of the work done, such estimate to include any materials purchased and delivered to the Contractor, or especially designed and ordered for the work under this contract the same as if the work had been completed, and this contract shall thereupon be terminated. All materials paid for and included in such final estimate that are not of the property of the Company shall be delivered to the Company before such estimate is paid. The canceling of this contract *shall not entitle the Contractor to any claim for damages or for anticipated profits on the unperformed portion of the work;* but the Chief Engineer may, at his discretion, determine upon a fair and equitable compensation to be paid, in case such canceling inflicts an undue hardship on the Contractor."

IV

In the following clause the railroad seeks to make the contractor responsible for "the negligence of the company":

"The Contractor agrees to indemnify and save harmless the Company for and from all claims, demands, payments, suits, actions, recoveries and judgments of every name and description, brought or recovered against it, for, or on account of, any injuries or damages received or sustained by any party or parties, by reason of any act of the said Contractor, or of any sub-contractor hereunder, or of any agent or servant of either said Contractor or Sub-Contractor, in the construction of said work, or by or in consequence of any negligence or carelessness in guarding the same; or on account of the death of or injury to the person, or damage to the property of the Contractor, or of any Sub-Contractor hereunder, or any of the agents, servants or employees of the Contractor, or of any Sub-Contractor hereunder, who shall be engaged in or about the work to be performed under this contract, or any sub-contract hereunder, *whether such death, injury or damage shall be caused by the negligence of the Company, its agents, servants or otherwise,* and so much of the moneys due or to become due to said Contractor, under this agreement, as shall or may be retained by the Company until every and all of such claims, demands, suits, actions, recoveries and judgments shall have been settled and discharged, and evidence to that effect furnished to the satisfaction of said Chief Engineer."

In this clause the Company throws on the contractor all loss due to delays caused by the Company:

"It is expressly understood and agreed that the Contractor shall not be entitled to claim or receive from the Company any sum whatever in excess of the contract price for the work provided for herein, by reason or on account of *any delay caused in such work by the Company.*"

In this clause damage caused by the mistakes of the railroad's engineers is cast upon the contractor:

"And if the contractor in the course of the work shall find that the points, grades and levels which are shown upon the plans are not conformable to the physical conditions of the locality of the proposed work or structure, it

shall be the duty of the Contractor to immediately inform the Chief Engineer of the Company of the discrepancy between the points, grades and levels shown on such plans and the actual physical conditions of the locality of the proposed work, and *no claim shall be made by the Contractor against the Company for compensation or damages by reason of the failure of the Company to represent* upon said plans the points, grades and levels conformable to the actual physical conditions of the locality of the proposed work."

These one-sided conditions must be done away with and they can be remedied only by concerted action on the part of sellers. No one contractor can help matters by saying he will not sign contracts that are drawn entirely in the interest of the buyer; that would simply result in depriving him of work.

Nor is it a situation that can be met in this country by legislation, since it is the constitutional right of the adult citizen to sign such contracts if he wishes to, and once signed the courts will enforce them, unless there is fraud.

Contractors as a unit must say they will not accept contracts that contain unfair provisions.

V

Another illustration of "brutal" buying is the calling for bids on work to be taken practically when the purchaser pleases, often not at all.

The writer has before him copies of two requests from railroads for bids on certain steel work.

One road asks for proposals for "approximately 3,000 tons, more or less," it will agree to take not less than 2,500 tons during the year, but insists the contract shall cover a possible maximum of 6,000 tons.

The other road asked for bids on its "probable require-

ments from 1912 to 1914 inclusive"—three years. It did not commit itself to the purchase of any minimum amount. In other words, it asked for blank contracts that would protect it if steel should go up, and let it out if steel should go down.

The fact that roads do not often take advantage of these one-sided agreements is no argument in their favor—on the contrary, it is a strong argument against making agreements that are harmful when not superfluous.

Railroads are no worse offenders than small companies and individuals. It is human nature to demand of the seller all he has agreed to deliver if prices go up, and to wriggle and twist to get out of taking what one has agreed to take if prices go down. Men in all walks of life are quick to seize a profit, and equally keen to evade a loss.

The trouble is with the system—it is altogether one-sided, it does not give the seller a fair chance.

Purchasing agents cannot be blamed for drawing contracts in favor of their roads when sellers are only too eager to sign them.

VI

In the erection of steel buildings the owner usually asks for bids on the entire work from general contractors. In order to make up his bid it is necessary for the general contractor to get bids upon the different parts of the work, cement work, stone work, steel work, tile work, wood work, etc., etc. Some parts of the work the general contractor may do with his own men, but a great deal of it he must sub-let to others. As a rule the entire steel work is let to some steel fabricating company.

The general contractor asks a number of fabricating companies to bid on the steel. When the bids are in he uses the lowest in preparing his own general bid to the

owner. If he gets the contract does he, in good faith, let the steel work to the steel fabricating company whose bid he has used? Not at all. On the contrary he takes that bid and uses it as a club to get a lower bid from some other company. If the first bidder says to him:

"I was the lowest bidder, you used my bid in making up your own."

"Yes, but that was before I got the contract."

"Don't you think we ought to have the work?"

"Not if I can get some one else to do it lower."

And in dull times the steel fabricating company meekly asks the privilege of competing again for the same work.

This is one of the conditions that can be remedied only by concerted and firm action on the part of the sellers; they should refuse absolutely to bid to a general contractor unless he agrees that if he gets the contract he will, in good faith, sub-let to the one whose bid he has used in making his own estimates.

To call for bids with no intention to let on the lowest is a fraud upon bidders.

VII

To make an estimate on even a simple job, costs time and money, and to ask for bids should carry the assurance, express or implied, that barring unforeseen contingencies the lowest bidder will get the contract.

Except on public work that rule does not generally prevail—quite the reverse is the practice.

And even where it is the intention of the buyer to give the contract to the lowest bidder, he seldom refuses if a higher bidder comes in at the eleventh hour and revises his bid to make it the lowest. That is to say, if the buyer does not negotiate to secure such revisions, he seldom declines when they are thrust upon him.

It should be, if not the law, at least the hard and fast custom that when bids are called for the award must go to the lowest, and further, that no revisions will be received, unless for good reason the entire bidding is again thrown open.

A little reflection on the part of the buyer will satisfy him that the surest way to get the lowest price is to ask for but one bid from each bidder with the clear understanding that under no circumstances will a second proposition be received.

The comparatively few purchasing agents who pursue this policy insist they get better results in work, deliveries and prices than do those who "haggle" over each contract.

The bidder in need of the work, who knows he will have but the one chance, makes a lower proposition than he would where he knows he, as well as others, will have opportunities to bid lower.

Both courses are phases of the old competition, of the vicious system of secret bidding, but the one and only one bid custom is incomparably more straightforward than the other; it is a step in the right direction.

So long as members of an association are free to bid what they please and do so independently of one another, why may they not resolve in advance that having once made their bids in good faith they will not revise or change them?

Once more it may be urged, "The resolution is in restraint of trade, the law will not permit."

But why?

It is one thing for a combination to agree upon the bid or bids that shall be submitted, that controls the freedom of each member to compete; it is quite a different thing for the same combination to simply agree that where a buyer calls for and accepts bids he must, in good faith, act upon them, for that in no wise affects a member's freedom to

bid what he pleases; but having made his bid, if he finds he is not the lowest, he must not rush in with a new bid to get the work away from the man fairly entitled to it.

Suppose the government let work in such a tricky manner, what would the public think?

Suppose on opening bids—say, on supplies for the army or navy—received from all parts of the country, the government agents should step around to nearby contractors, give them the tip their bids are not the lowest, and permit them to revise!

What is right and legal in the letting of public contracts ought to be right and legal in the letting of private.

There is no good reason why an association should not be permitted to impose upon its members the same restrictions regarding revised bids that the government imposes upon bidders, and there is every reason in the world why customers should approve such restrictions, for they are in the direction of the one-price-to-all policy.

Buyers and purchasing agents who pursue the fair policy are, however, comparatively few in number.

Two things are done, both of which are manifestly unfair.

1. Bids are called for as if contracts would be let on the lowest, but with no intention of doing so, the real intention being to compare the bids as they come in and use them as a basis for further negotiations to get lower figures. That is one practice, the other is still more unfair—not to say fraudulent.

2. A buyer calls for bids but intends to give the order to a favored party; the others do not know they have no chance, but spend time and money in making up their estimates; if the favored party's bid is not the lowest he is told what figure he must meet to get the order. In this case, getting bids from others is usually for the purpose of "keeping up appearances," of seeming to buy in open

competition; sometimes the other bids are used to keep down the price of the party who is really to have the order.

It not infrequently happens that some of the other bidders learn that a certain party is to have the order and to make him take it at cost they put in bids they would not care to have accepted—this is a combination of "brutal" buying and "vindictive" bidding—vicious all around.

VIII

We come now to a practice the law might reach, though not so effectually as an open-price association.

We refer to the habit buyers have of saying they have lower offers when such is not the fact.

The average purchaser prides himself on his ability to get the better of sellers, hence he does not hesitate to make any statement that will bring a lower offer.

He takes the lowest bid he has and coolly says to the bidder, "You're way up; I've half a dozen offers better'n yours."

The average reader whose walk in life does not bring him in contact with large buying will be amazed to learn that such practices prevail so generally and that they are not condemned by law, for they are a shock to the moral sense of mankind, to the sense of fair play.

The law should condemn them, but it is feared it does not reach even the grossest.

The trouble begins in the country village. It is easy to say the purchasing agent of a railroad is a liar when he says he has a lower bid and has not, but when we trace the practice home to every buyer and every seller of butter and eggs, potatoes and cabbages; to every farmer, horse-dealer, cattle-raiser; to every carpenter, painter and paper-hanger, we see that it would be hard to so draw the line as to condemn the railroad buyer and not touch the others.

The law is made to fit the average man, consequently it must be a little blind to his habitual failings—it does not arrest him when a little drunk, but only when so noisy as to disturb others; it does not interfere with a little lying and a little rascality, but only with conduct so notorious it cannot pass unnoticed.

IX

The open-price movement deprives the tricky buyer of his advantage.

To refer to an actual instance:

The member of an open-price association called at the office of the purchasing agent of a large railroad to see about a certain order for which he had put in a bid. The purchasing agent pretended to look through a file of papers, then said blandly,

"Sorry, but there are two or three lower bids than yours."

The bidder was surprised, "I don't see how that can be, I am sure my bid is the lowest."

"Not by a good deal, but I am willing to give you a chance to come down——"

"Hold on," the bidder interrupted, "either you are stringing me or some one else is. Here are all the bids you have received," and he drew from his pocket an abstract of bids.

The agent looked surprised. "Where did you get that?"

"I am a member of the ———— Open-Price Association, and every bid made on work is reported to the secretary the moment it is made and he sends this abstract to every member bidding. According to this report I am the lowest bidder. If you have a lower bid, whose is it?"

"That's my affair."

"All right, let me use your telephone and I will call up the secretary and tell him what you say; he will get in communication with all who have bid and get at the truth of the matter."

The agent smiled, "I guess you got me cornered—you may have the order."

X

It cannot be reiterated too often that it is just as important for buyers to understand and approve the open-price movement as it is for sellers, and therein it differs fundamentally from all associations under the old competition.

The coöperation of buyers is needed when the attempt is made to draw standard forms of contracts that will be just to both sides.

A combination of buyers must decide what *it*—for them—wants; a combination of sellers must decide what *it* —for them—wants. There is no other way to accomplish anything.

Yet in the face of this practical necessity, many good lawyers will express doubts regarding the legality—under the Sherman law—of a combination that in any manner restrains a man's freedom to make a fool of himself.

When a body of men draw a standard form of contract and say, for instance, that they will not make bids in such a manner that the purchaser may take the material if it pays him to do so, or not take it if it pays him to back out, or that they will not sign contracts which leave all differences to the decision of the purchaser or his agent; or that they will not make bids to a general contractor unless he agrees, in good faith, to sub-let on the lowest—in a sense all such agreements restrain the freedom of bidders, restrain their right to bid recklessly, and to enter into contracts that are unfair and one-sided.

But in a broader sense such agreements extend and expand trade, for they place it on a sounder, healthier footing.

They do not curtail competition. Given a standard form of contract, it matters not how minute the provisions covering every detail of the work, so long as the final price is not fixed, competition is not only as free as before the adoption of the contract, but freer, since each man knows precisely upon what all the others are bidding; the competition becomes a matter of price with no opportunity for evasion, no chance to get the better of either the purchaser or other bidders by cunning in the drafting of this provision or that.

XI

To summarize the argument:

Into any given transaction such as the letting of a contract a great many elements enter. Practically all of these elements fall under:

1. Time of performance; 2. Manner of performance; 3. Terms of payment. Either side may combine and dictate any two of these elements and so long as one is not fixed competition may be as keen as before. This is especially true when terms of payment are left open.

An association of sellers may adopt the most stringent rules regarding, (1) Time of performance, and (2) Manner of performance, without affecting competition or restraining trade, so long as each is left free to bid as he pleases regarding (3) Terms of payment.

The very theory of the open-price movement is to leave each member free to fix his own price on his products or his work, but to reduce to a minimum every other element of uncertainty in the trade.

CHAPTER XIII

RELATIONS WITH SELLERS

I

What is true of the relations of the individual to customers is true—in reverse sense—of his relations to those from whom he buys his raw material; one day he is in the ascendancy getting material at less than cost, the next he is on his knees begging supplies at any price; he is the victim of sudden and violent market changes.

Business is a lottery; there is no game of chance with so many elements of uncertainty; in every other gamble the player may calculate to a fraction of one per cent. the odds for or against him and take the risk with his eyes open; in commerce men "go it blind."

The Science of Trade is yet to be written; some day it will be, for there must be a thread of reason in what men do to make money, there must be some fundamental principles the discovery and observance of which will clear up many of the uncertainties attending business transactions, there must be some basic propositions the truth of which cannot be gainsaid.

For instance, the proposition, *"No man should sell goods below cost,"* is one of the first dictates of common business sense, it is an elemental rule of business conduct, but it is only a bit of advice and has nothing to do with either a science or a philosophy of trade, for it simply means that if a man does sell below cost he will lose money.

But the proposition, *"No man should be* PERMITTED *to*

sell below cost," is fundamentally different and its discussion is impossible without some general convictions regarding a science of trade—the validity of the proposition depends upon the theory of business of which it is a law or rule of conduct.

II

Again, *"A man will buy where he can buy the cheapest and sell where he can sell the dearest,"* is simply a statement of a natural tendency when individuals are free to do as they please; it is one of the natural conditions that a science of trade must take into consideration, but in itself it amounts to no more than the statement, a man will eat when hungry.

A philosophy of living must start out with the assumptions that men will drink when thirsty and eat when hungry, just as they will do a thousand other things *if left to themselves*—the philosophy of right living lies in ascertaining those rules of conduct which should control natural impulses and by preventing men from drinking whatever they please whenever they are thirsty and eating as much as they please whenever they are hungry, make better men of them.

In the same way the philosophy of trade when written will seek the principles that underlie commercial conduct and, finding them, develop laws and rules of conduct, the observance of which will make men better manufacturers and merchants.

The attempts of political economy in this direction are fitful and feeble; it is a "dismal science" because for the most part it contents itself with observing facts and drawing therefrom generalizations which it calls "laws" but which are still no more than facts.

When the academic political economist finds that men,

if left to themselves, tend to buy where they can buy the cheapest, and sell where they can sell the dearest, he promptly elevates the natural tendency to the place and authority of a law, and an entire school of economists proclaims the irrelevant proposition that this "law" must not be interfered with.

Whether a man should be *permitted* to buy where he can buy the cheapest and sell where he can sell the dearest is a question which involves both a science and a philosophy of trade.

The mere fact that nearly every one will respond, "Why, of course he should," does not alter the truth that the question calls for some systematized conceptions, otherwise how is it possible to answer so positively in the affirmative?

When we discuss the rights, ethical and legal, of the individual as an individual, as against society as a whole, we are on ground every square inch of which has been trodden smooth, but when we discuss the economic and practical rights of the individual in trade, as against competitors and the public, we are in territory where little systematic work has been done and notions are hopelessly confused and contradictory.

Conditions in the United States are especially interesting in this connection.

Generally speaking, the people of this country in commercial intercourse among themselves are firmly committed to the proposition that the life of trade depends upon the freedom of each man to buy where he can buy the cheapest and sell where he can sell the dearest. The theory has the force of an obsession; laws are framed to support it and men are even prevented from contracting away the precious right.

The theory of anti-trust legislation is that trusts, by controlling competition and restraining trade, interfere

with this sacred right of the individual to buy and sell wherever he pleases.

But if a merchant in Detroit crosses the river to buy cheaper woolens in Canada he finds this "fundamental maxim of trade" shattered at the border.

In its domestic commerce the United States threatens to imprison men who restrain the individual's liberty to buy where he can buy the cheapest; in its foreign commerce it threatens to imprison a man if he tries to exercise the right.

A man's philosophy of trade must be narrow indeed if he can so much as attempt to justify the proposition that trade must flow *freely along* one side of a business street, but not *across* the street because an invisible geographical line runs through the center of the street marking the borders of Mexico and Arizona.[1]

The man who succeeds in adjusting his philosophy of commerce to this political condition, wakes up some fine morning to find that the geographical line has moved or disappeared, that trade flows freely where it was obstructed before—what becomes of his philosophy? Like the geographical line, it moves or disappears; he is obliged to confess that his so-called philosophy was nothing more than a theory of political expediency or, more likely, simply selfish considerations framed in high-sounding, *pseudo*-patriotic phrases.

It is not intended here to argue for or against the doctrine of protection, but only to point out the fact that in domestic commerce free trade is guaranteed by constitutional provision and a variety of laws, while in foreign commerce it is prohibited in all but a few articles, and

[1] The line dividing Mexico from this country runs through the center of the business street of Nogales, Arizona. The stores on one side are Mexican, those on the other American. Custom officers are stationed on each side of the line to see that no thrifty housewife passes with a paper of pins.

forbidden not for the sake of revenue, but deliberately for the avowed purpose of preventing men from buying where they can buy the cheapest.

III

The brief story of an industry will suffice to illustrate the argument.

"The legislation for the establishment of the tin-plate industry rests upon three ideas: first, that seventy millions of people should not depend upon Welsh works for tin plate; second, that the foreign tin plate is poorly made and does not meet our particular wants; third, that the country needs a new industry in which more labor can be employed. In these three statements we have a blending of the commercial, the economic, and the political." [1]

It will scarcely be urged that these "arguments" are based upon any philosophy of commerce, either profound or superficial; they sound, rather, like the reasoning of men with "axes to grind," and so they were, for "behind the scenes another class, the men who owned supposed tin mines, endeavored to secure the attention of Congress. They were anxious that the tin-plate industry should be encouraged, provided that block tin was put on the tariff list."

"Prior to 1890 no tin plate had been made in this country. The McKinley tariff of that year, with its high duties on plate and pig-tin, was the beginning of the industry. The growth of the industry was due to many favoring conditions. Capital was attracted, and by 1898 there were 'forty-one plants operating 235 mills.' [2]

[1] William Z. Ripley, Ph.D., "Trusts, Pools and Corporations," pp. 295-296. The chapter on the Tin-Plate Industry is by Frank L. McVey, of the University of Minnesota.

[2] In March, 1898, *Tin and Terne* said: "The market has continued

"The excessive competition of the many tin-plate plants established under the hot-house influences of the tariff of 1890, in company with the rising prices of materials, has brought about the formation of a combination known as the American Tin-Plate Company."

"It will be seen from what has been already said that the tin-plate industry was in far from a healthy condition. Everything pointed to demoralization. It was very natural that, under these conditions, repeated attempts should be made to form a combination."

The combination was formed and proceeded to reorganize the business. The organ of the trade said in 1899:[1] "At the present time a number of the plants have been closed down. Among them are some of the largest and best equipped mills in the country. The company now owns every tin-plate plant in the United States making a product for the general trade. Just how long these establishments are to remain closed is impossible to say, but undoubtedly the company is trying to find out to just what extent it is necessary to operate the different plants to supply the demand. If it is discovered that all or nearly all are necessary, two lines of policy are open to the directors: first, to operate all the mills owned by the company; second, to close the more poorly equipped and badly situated mills and to increase the producing power of the better plants. It is more likely that the second, or at least a modification of it, will be followed."

The combination was very successful, and in 1901 was taken over by the United States Steel Corporation.

As this chapter is being written the Government has a suit pending to dissolve the last-named corporation on the

very unsettled and unsatisfactory to both buyer and seller alike. War and rumors of war, trusts and rumors of trusts, are having a disturbing influence, and in no branch of metal industry have prices been as unsettled and confusing as in tin-plates."

[1] *Tin and Terne*, February 23, 1899.

ground that it was organized to restrain and monopolize trade contrary to the Sherman law, one of the industries being the tin plate.

In its various attitudes toward the industry the Government has "boxed the compass."

Several millions of people were buying tin plate where they could buy it cheapest—to wit, England.

The Government, at the urgent solicitation of interested parties, makes a law to the effect that the people shall not buy where they can buy the cheapest, but must buy where tin plate is dearest—to wit, at home.

Then, when competition at home reduces prices to cost and below, the manufacturers naturally combine to get what the tariff promised them—profits; whereupon the Government steps in and asks that this combination be dissolved because it controls competition and restrains trade —precisely the two objects Congress had in mind when it passed the McKinley, the Dingley, and the Payne tariff bills.

The apologist for the Government will urge that in erecting a tariff wall against outside competition the least protected manufacturers inside the arena can honorably do is to slaughter one another by cut-throat competition—an argument that does not appeal with irresistible force to the fellow on the verge of bankruptcy.

IV

Whatever may be said for or against the policy, it is undeniably true that the theory of protection is diametrically opposed to the proposition that a man should buy where he can buy the cheapest and sell where he can sell the dearest.

It is based upon the fundamentally different proposi-

tion, namely, that a man's freedom to buy and sell may be controlled and restrained in the interest of the community, that even the entire community may be prevented from buying what it needs where it can buy the cheapest.

Whether this proposition be sound or unsound need not be discussed here, suffice it to say it has been at the foundation of the commercial policy of this country since the adoption of the first protective tariff, and in one form or another it has influenced the commerce of the world so long as we have any record of men's actions.

From time immemorial trade has been restrained and hampered in many directions, as some restrictions fall into disrepute and disappear others appear, until there is not much left of the doctrine that a man should be free to buy where he can buy the cheapest and sell where he can sell the dearest.

If this freedom is restrained as between nations and localities, may it not be possible that it should be controlled as between man and man?

Those who say it should not be restrained as between nation and nation, and locality and locality, will quickly say it should not be restrained as between man and man, but the conclusion by no means follows:

It is one argument—and a strong one—that nations should interfere as little as possible with the flow of trade from country to country, locality to locality, since such interference is largely wholesale and undiscriminating, making paupers here and millionaires there; but it is quite another thing to say that the people—employers and employees—whose fortunes and whose bread hang upon the prosperity of an industry, shall not be permitted to meet conditions and by united action avoid the disastrous effects of irrational competition; it is a very different thing to say they shall not unite and demand, as an economic right, that those from whom they buy shall sell at fair, uniform

and stable prices, and that those to whom they in turn sell shall pay fair, uniform and stable prices.

At all events, these questions are open to discussion, and certainly in no country that maintains a *protective tariff* can the discussion be foreclosed by any appeal to so *doctrinaire* a proposition as that "men should be free to buy where they can buy the cheapest and sell where they can sell the dearest."

V

A man may have an "unalienable" right to "life, liberty, and the pursuit of happiness," as the Declaration of Independence puts it, but whatever that sounding phrase may mean in the abstract, it is certain he has no "unalienable" right to buy goods below their cost of production and sell them above their fair value, he has no abstract right to ruin either those from whom he buys or those to whom he sells, nor has he any "unalienable" right to ruin competitors.

He has no divine right to hire children to run his machines, women to do men's work in his factories, men to labor twelve hours per day.

Our fancied "rights" to do all these things have the force of custom, nothing more. Every relation in life is open to investigation, discussion and readjustment on a right, or righter, basis.

Rights result from and are entirely *dependent upon relations.* What one man's rights are as against another turn upon his relations to the other; the rights of father against son, brother against brother, friend against friend, partner against partner, employer against employee, competitor against competitor, buyer against seller, all depend upon and vary widely with those relationships.

In most of these relationships, and particularly in trade

relations, the world has been too long content to go on from generation to generation upon the assumption that vague propositions of a superficially philosophic character are all that are needed, whereas the truth is that each of these relationships—especially every trade relation—demands critical and exhaustive inquiry to ascertain the rules that should govern to secure the best results. This inquiry must be approached with an open mind, one must disabuse one's self of preconceived notions and prejudices, and be prepared to follow the logic of facts whithersoever it leads —it is most certain to lead far afield from prevailing theories and practices.

VI

To return to the particular relations under discussion—those of buyer to seller—there must be propositions of a general and practical character that should be observed by both sides, but, so far as the writer knows, no attempt has ever been made to work out these propositions on a scientific basis.

Before the ancient and anarchistic assumption that every man has the right to buy where he can buy the cheapest and sell where he can sell the dearest—all rights disappear; it is each man for himself, regardless.

There is scarcely a man in business who would not gladly give up this so-called "right" to buy where he can buy the cheapest if he could be assured of the following:

1. That he is paying no more than a fair profit on what he buys.

2. That his competitors, buying substantially the same quantities under substantially the same conditions, pay the same prices.

3. That the price of what he buys will be changed

only after sufficient notice to enable him to adjust his stock accordingly.

In other words, what every buyer—especially every buyer who buys to sell—wants to reduce the elements of uncertainty of trade are:

1. *Fair prices.*
2. *Uniform prices.*
3. *Stable prices.*

Of those requirements, uniform prices, and stable prices, are of far more importance in eliminating the uncertainties of business than fair prices.

In fact, a fair price must be also a uniform and a stable price, else it is not fair.

VII

A may be able to sell a ton of pig-iron at $10.00 and make $1.00 profit. B, because he owns a mine or by reason of the better location of his furnace, may be able to sell a ton at $9.50 and make $1.00, but the maker of steel who buys pig-iron is not interested in the relative costs of A and B, nor is he vitally interested in getting his iron at $9.50 instead of $10.00; what he is interested in is to be certain that he pays no more for his iron than competing steel makers pay. There is not a steel maker in the country—aside from those who love the "gamble" in the business—who would not rather pay a *fixed price*—whether high or low is immaterial—than pay one price to-day and another to-morrow, and know that possibly competitors are getting some secret concessions that give them an advantage.

As things now are the purchasing of pig-iron is one of the big risks of the business, one of the elements of uncertainty that should be eliminated if possible.

The speculative elements may be reduced to a minimum in two ways:

A. By concerted effort on the part of the parties interested to frame their own rules of conduct.

B. By law.

The law should intervene only after failure on the part of the parties themselves to act.

It cannot be too often pointed out that the law should be a last resort, since at best it is the intervention of unskilled legislators to do for industry what skilled operators neglect to do.

Unhappily, as has been remarked, the law in this country makes it exceedingly difficult for the men interested to do anything at all. The law literally says, "You shall not coöperate to help conditions," and it says this under threat to prosecute them as criminals.

For a period of years this country has tried the experiment of persistently scattering business men who come together to better conditions. Most of their efforts were undoubtedly directed toward regulation of prices and competition, and in many instances were arbitrary, oppressive and wrong—but whether right or wrong the law objected and said, "Separate, go back to your offices and factories and fight along the old, wasteful lines."

At the moment there is a pronounced reaction; the public sees that some sort of regulation is necessary to mitigate the evils of the old competition, that unless these evils are mitigated the strong will surely eliminate the weak, and monopoly result.

But does Congress propose to repeal the law that forbids coöperative effort? Not at all. A certain element has a very different programme; it proposes to leave in force, and even make more drastic, laws against coöperation, to create a federal commission, to do what business men would

like to do, and in large measure could better do for themselves.

What will be the result? Precisely what has happened with the railroads under the Interstate Commerce Law. The Interstate Commerce Commission shuts its eyes to the fact that the roads, regardless of the Sherman law, meet regularly and absolutely stifle competition so far as rates are concerned; only through the Traffic Associations can the law be enforced.

If Congress creates a Federal Commission to supervise interstate industries, the Commission will be powerless to accomplish anything in a large way without the systematic *coöperation of associations of parties interested.*

A federal law of a constructive character covering interstate industries is a necessity, a federal interstate industrial commission like unto the Interstate Commerce Commission is also a necessity, but the prime object of both law and commission should be to encourage the formation of associations, each embracing an entire trade or industry, as practical instrumentalities to suppress abuses and work out reforms.

VIII

There are two classes of buyers:

A. Those who buy to consume.

B. Those who buy to sell.

The relation of the ultimate consumer to the seller of what he needs or wants is different from that of the producer or dealer to the seller of the goods or raw material he needs in his business.

It is commonly assumed that the ultimate consumer has but one interest, to buy where he can buy the cheapest—if a farmer is forced to sell his produce, or a bankrupt shopkeeper his goods, below cost, that is supposed to be the con-

sumer's golden opportunity—*per contra,* if farmers or merchants combine to get a little profit on what they have to sell the consumer complains so loudly the law takes notice.

Even the ultimate consumer might be better off if he could be assured of fair, uniform and stable prices, if wide and sudden fluctuations could be checked, but however opinions may differ on this point, there can be no question that the producer, the merchant, the contractor, the manufacturer, would be incomparably better off if he could know that prices are uniform and will remain stable for given periods of time.

The consumer's first interest is in what he himself pays; the producer's first interest is in what his competitor pays.

A carpenter contractor in a small town likes to buy his lumber as cheap as he can, but whether he pays a dollar per thousand feet more or less is of slight importance as compared with the certainty that no other carpenter in the place is buying for less.

What chance does the painter stand if in figuring on a job he is obliged to figure his paint at one price, while a rival gets a secret discount of ten per cent. from the paint dealer?

These are no hypothetical illustrations, but conditions that prevail everywhere.

The merchant is far more vitally concerned in what rival competitors pay for their goods than he is in what he pays for his own. Under secret competition he cannot find out what they pay, so there is but one thing for him to do, go ahead in the dark and protect himself by buying as cheaply as he can, even to the extent of buying inferior goods and passing them off for better.

Shoddy, adulterations, short weights, fraud, deceptions, are all the logical results of buying under the old competition.

Profit is largely an individual matter, price is of social concern.

That A should make a living out of his business is of importance to the entire community, but whether he makes much or little over his living is of slight importance as compared with the effect of the prices he places on his goods.

IX

Has a manufacturer the right—ethical or economic—to sell a dealer a six months' supply of goods at one price and the next day or week lower the price to others in the trade?

The answer to that and similar questions will depend upon one's philosophy of business. Those who believe that "All's fair in trade and war" will have no scruples, and that is the maxim of the old competition, but those who see that a new competition is coming, that the old, with its sharp practices, merciless methods, is passing, will have no hesitation in answering that a man has no right—moral or economic—to sell what he produces at such prices as he pleases regardless the effect his conduct may have upon the welfare of others.

Many buyers are strong enough to insist the seller shall agree to give them the benefit of any lower prices he may make in six months or a year. The small buyer is not in a position to demand this protection, he is helpless and loses if prices go down.

Many a small merchant and manufacturer is driven out of business because he cannot command the terms, the rebates, the concessions, the protection given his large competitors.

The big jobber is always well "taken care of" by the manufacturers whose products he handles.

The open-price association, pressed to its logical devel-

opment, will bring all these things out in the open—every price, every rebate, every discount, every discrimination, and once out in the open, every price, every rebate, every discount, every discrimination *that is unfair will go.*

The tendency will be toward *fair* prices, *uniform* prices, and *stable* prices.

That means that sellers and buyers will coöperate together to *control fluctuations* in prices; prices will be quoted and maintained for definite periods; purchases will be made and sales made with reference to price-changes that will be announced such periods in advance as different trades and industries require.

These are practical propositions of wide-reaching importance, and can be worked out only by the men actually concerned, but they will be worked out under the supervision of some Government commission or agency *the first duty of which will be to see that prices are maintained precisely as agreed,* that there are no evasions, no secret concessions by unscrupulous makers and dealers eager for trade.

In short, the influence of the Government will be exercised to *fix* prices and *keep them fair and stable* instead of, as now, to *demoralize* prices and make them more unfair and less stable.

The suggestion sounds revolutionary, but it is not new, for that has been the course of events in the railroad world.

X

The railroad situation is far more complex than that of any industry. The cost of transporting a passenger or a ton of freight per mile is not the same to any two roads, or to any one road for two succeeding months.

Yet the roads are compelled by law and necessity to get together to *fix* rates and *maintain* those rates, making no

changes without due notice in advance—and all this under the supervision of the Interstate Commerce Commission.

Nobody complains because rates are *fixed*, and *maintained* for long periods regardless of fluctuations in cost of service; nobody asserts the right of each company to charge what it pleases, to carry freight and passengers at a loss if it sees fit—those notions have long been relegated to the scrap-heap; they belong to the good old days of railroad buccaneering, when "The public be damned" was the motto that hung on every wall from the president's office to switchman's shanty.[1]

The *new theory* that is gradually making headway is that while rates must bear a certain relation to cost, including fair returns on investment, *the question of profit is of far less importance than the question of uniformity and equality in distribution of charges.*

In other words, so long as the building and operation of railroads is left to individual enterprise, it is conceded that there is a minimum return to stockholders below which the service will be impaired, but whether the profits exceed this minimum one per cent. or ten per cent. is of less importance to shippers and the public generally than the question of uniformity of rates.

At present in every rate controversy two distinct questions are raised and argued with great heat, with the result that true issues are obscured.

[1] The Government even sees the wisdom of *calling a halt to ruinous competition:*

"SAN FRANCISCO, March 31.—A cut in sea freight rates of from 25 to 40 per cent. for cargoes shipped from San Francisco to New York has been announced by the American-Hawaiian Steamship Company. The company offered to contract with San Francisco shippers at 30 cents per 100 pounds.

"The reductions follow a cut recently made by the Pacific Mail Company, *which was prohibited from further rate-slashing by the United States government, which fixed definite commodity rates.* The action of the American-Hawaiian Company is believed to be the result of competition by independent steamers."

The question whether a proposed rate is sufficiently above the cost of service to yield a fair return on investment; the question whether a proposed rate is fair to shippers and localities affected.

The two questions are not necessarily connected.

A rate may be below cost of service and manifestly unfair to certain shippers and localities; or a rate may be double what it should be, and yet be so fair to both shippers and localities that no one wishes to disturb it.

The ideal rate is one that is fair to all parties, but the ideal rate will ever remain an "ideal," approachable but never attainable.

In the rate controversies that constantly arise, the attention of the public is too apt to be diverted from the consideration of adjustment and distribution to that of cost and returns to the roads.

The contest between the roads clamoring for higher rates and this or that interested body of shippers or this or that locality crying for lower rates, is an entirely selfish one; the particular shippers and towns will be highly delighted if they get reductions that ruin other shippers and other towns—their real object is to get an advantage over their rivals; they rouse the public by talking loudly about the profits of the roads, etc., etc., but all that is "sand in the eyes"; the same shippers and towns will fight just as strenuously if the roads propose to reduce freights to other localities.

Time was, and that, too, in the recollection of every man of fifty, when the railroads of the country did openly and believed they had the right to do the following things:

1. Make such rates as they pleased and change them as they pleased.
2. Build up favored localities and ruin others.
3. Build up favored shippers and ruin others.

4. "Get even" with villages, towns, cities that did not pass such ordinances as they wanted.

5. Ruin competing lines by savage rate wars—wars that frequently reached the stage of carrying passengers for nothing.

But all these conditions have changed, not a railroad in the country is permitted to do any one of these things.

But the merchants and the manufacturers of the country, the large corporations not only may, but are encouraged by law to:

1. Quote such prices as they please and change them as they please.

2. Build up favored localities and ruin others.

3. Build up favored customers and ruin others.

4. Get even with any place or any buyer by selling to rivals at lower prices.

5. Ruin competitors by savage price wars—wars that frequently reach the stage of selling far below cost.

How long will this anomalous condition last? How long will it be before the country insists upon the same regulation of prices that it demands regarding rates?

XI

One thing is certain in this connection, the power of the individual to run his business as he pleases is going to be greatly curtailed, curtailed in much the same way the power of the railroad company to run its road has been curtailed.

As already said, there are but two ways for this restraining influence to be exercised, by *law*—along *socialistic* lines; or by voluntary *coöperation*—along more highly developed *individualistic* lines.

The country should choose with a clear understanding.[1]

[1] The following description of the workings of railway traffic associations is by a man prominent in the railroad world. In operation they

are not unlike the workings of the Open-Price Associations advocated in this book:

"Conferences between railroads on subjects affecting the general interest are conducted by means of the so-called Traffic Associations. These associations are voluntary, non-incorporated organizations, the membership of which consists of the railroads occupying the same or contiguous geographical territory. Each organization has a printed constitution and by-laws, the special feature of which is that any member of the organization who proposes to make any change in any existing practice, will *notify his associates at least thirty days in advance of the taking effect of the proposed change.* In other words, he obligates himself to give to his associates the same notice that the federal law requires he shall give to the Interstate Commerce Commission. He is free at all times to do any and all things he may desire, but has obligated himself that before making same effective he will give the notice referred to, to the other members of the association.

"Covering each of these geographical divisions above referred to, there are two organizations, one handling matters relating to freight traffic and the other handling matters relating to passenger traffic. The Trunk Line Committee, consisting of two bodies, one devoted to freight matters and the other to passenger matters, covers the territory between the Atlantic Ocean and Pittsburgh and Buffalo, and north of the Potomac River.

"The Central Freight Association and the Central Passenger Association cover the territory from Pittsburgh and Buffalo to Chicago and St. Louis, from the Great Lakes to the Ohio River.

"The Western Freight Association and the Western Passenger Association cover the territory from St. Louis and Chicago to the Missouri River; and the territory west of that point to the Pacific Coast is covered by the Trans-Continental Association.

"In the South the territory is covered by the Southeastern Association and the Southwestern Association.

"In addition to these major associations, there are innumerable smaller associations, handling local matters, some of them working independently, and others as sub-committees to the main organizations mentioned.

"These associations have paid officers and large clerical forces. The principal officers consist of a Chairman, generally called the Commissioner, and a Secretary. The salary paid to a Commissioner will in most cases be higher than the average salary of the railroad representatives who attend the meetings; from which you will understand that in a well-organized traffic association the Commissioner is something more than a mere presiding officer. In fact, he is supposed to be an expert on traffic matters, and expected to thoroughly guide and control the actions of the individual roads, although you will understand that such efforts on his part are frequently questioned by the membership, and oftentimes the cause of strenuous debate and animated discussion.

"The exact procedure in each of these organizations differs, on account principally of the difference in size of the various associations.

The Trunk Line, for instance, consists of but seven members, whereas the Central Freight or Passenger Associations have a membership of forty to fifty railroads. The general procedure, however, is the same in all of these organizations, whether it be a freight organization or a passenger organization, and is about as follows:

"An interested member introduces a subject for discussion. This may be a change in an existing rate, or it may refer to a change in classification of a certain article, which amounts to the same thing as a change in the rate, for the reason that transferring an article from one class to another class either lowers or raises the rate, according to the class in which the transfer is made.

"The question raised may also refer to some change in existing rules under which traffic is handled. It may refer to loading, demurrage, minimum carload weight, or any one of the thousand and one questions of mutual interest which are constantly arising in the railroad business.

"For the purpose of bringing the subject before the meeting, a resolution is introduced, which is generally worded: 'Recommended, that so and so be done.' If the resolution is seconded, it is then before the meeting for discussion. If the association is a large one, the resolution will, in most cases, be referred to one of the sub-committees that has this particular subject in its charge, which committee will return the resolution to the main body, with its recommendation. After the subject is thoroughly discussed by the organization, it is then put upon passage, and if carried by the majority vote, is declared by the chairman to be the recommendation of the body, and so appears in their printed proceedings.

"No member is bound by any agreement to make effective the recommendations so adopted, *but he is obligated to notify his associates if he decides not to adopt the recommendation.* Such notices are very frequent, and follow immediately after the declaration by the Commissioner that the resolution has been adopted, although they may be given by mail later on; in fact, at any time.

"These methods secure uniformity of action on the part of all railroads occupying the same territory, because either the recommendations are adopted by all lines, or one line serves an individual notice of what it proposes to do, and all the other lines are compelled, of course, to take the same action as the individual.

"Stenographic reports are taken of all proceedings, and while the debates are not published, the proceedings of each meeting are issued in printed form at great length, and such proceedings, when published, *become public documents,* and, while not given open circulation, access can be had to them by interested parties, through some means, at all times. They are, I think, in every instance, filed with the Interstate Commerce Commission.

"Beyond such steps as might be taken to exclude curiosity seekers, there is no secrecy about these meetings, their actions, their membership, or their officers. Interested parties frequently appear before these bodies, the passenger associations particularly, to urge the adoption of some suggestion which they desire to have made effective. Officers of

the commercial travelers' organizations have frequently appeared before the passenger associations to urge the adoption of certain rules or regulations, regarding mileage tickets, baggage rules, stop-overs, etc.

"These associations meet, as a rule, monthly, although some of them have bi-monthly meetings, and special meetings are of frequent, in fact, almost continuous occurrence. Meetings are attended by the chief traffic official of each railroad company, or, in his absence, by the next official in authority, or some officer designated to act.

"These traffic associations are as old as the railroad business, and came into existence with the construction of railroads, and have endured ever since. Some of them are now over fifty years old, but the practices, the constitution, rules and by-laws have been continuously modified from time to time, principally to meet changes in federal or state laws.

"These associations were originally founded on the basis of absolute agreements between the contracting parties to do or not to do specified things. Heavy money fines were provided for in case of violation, and in those days most of a railroad man's time was spent 'testing' the other fellow's freight and ticket offices, to see if he could not find him violating his agreements, and when such cases were discovered, which was continuously, set trials were had, evidence was introduced, and the Commissioner, as judge, imposed the penalties.

"All of this was abolished with the passage of the Interstate Commerce Law in 1887, and other radical changes were made in the constitution and by-laws of these organizations, following the decision of the Supreme Court in the Trans-Missouri case. Further changes were made with the passage of the Hepburn law, the result being that in the minds of the railroad men and their legal advisers, these associations follow the law, and only through these organizations can all the requirements of the law be observed, and the railroad business handled in the stable manner which is necessary to permit proper development of the resources of the country."

In U. S. *vs.* Trans-Missouri Freight Association (1896), 166 U. S. 290, and in U. S. *vs.* Joint Traffic Association (1898), 171 U. S. 505, the Supreme Court held traffic associations organized to regulate rates contrary to the Sherman law. Notwithstanding these decisions, the associations exist, and operate, *in effect*, the same as before. *Why? Because they are absolutely necessary to the conduct of railroad business and the Interstate Commerce Law could not be administered without them.*

CHAPTER XIV

RELATIONS WITH THE PUBLIC

I

What the public does not understand it distrusts; what it distrusts it condemns. These reactions are instinctive.

Heretofore, combinations in the world of commerce, industry and transportation have been primarily *selfish* in their objects and *secret* in their methods.

They have met behind closed doors and clothed their deliberations with mystery.

What more natural than that the outsider—the public—should feel that something is being done to his disadvantage?

The press is a power—it is the ears, the eyes and the tongue of the public. What it is not permitted to hear and see it will talk about; nothing can silence this active and often reckless tongue; the best way to gain its favor is to give it ample opportunity to learn the truth.

Nine-tenths of the things that are now done in secrecy in commerce, industry, and transportation, could be done, and done better, in the open, in coöperation with all parties interested and with reporters present.

More than nine-tenths of the things now done behind closed doors are known anyway very quickly to the parties interested, and sooner or later to the press and public, but everybody is alienated by the methods adopted.

If railroad men meet to discuss rates, why should they not invite shippers? If steel men meet to discuss prices,

why should they not open the doors to customers and the press?

If they do not, they are charged with doing and saying the things they should not, and no one will accept their word to the contrary.

If they try to fix prices, the trade knows it before the day is over, and the papers the next morning contain more or less exaggerated accounts of what transpired. The atmosphere of secrecy serves only as a red flag in the face of—the public.

There is no reason why men should not discuss their own affairs with as much secrecy as they please, but when they meet to discuss and settle matters that concern others, it goes without saying the others should have the opportunity of being represented if they choose.

Every man who has ever attended a meeting called to help conditions in a trade knows the influence the presence of an outsider has upon both discussions and actions. If no outsider is present, propositions of the most arbitrary and oppressive character are invariably made, and often adopted; there is no restraint, and the association usually does things it afterwards regrets.

With customers, or even neutral parties, present, it is impossible to speak with only one side in mind, and the framing of every resolution will be influenced, every action taken will be fairer. Manufacturers who meet to debate prices are fortunate if they have with them a few keen customers and observers; they are more apt to do the fair thing and the right thing—which means in the end the more effective thing.

II

Whatever may be said regarding old-line combinations, the relation of the open-price association to the public is of

vital concern, for its usefulness depends upon the sympathy and favor of the public.

The theory of the old competition is that no one class or individual can profit except at the expense of some other.

The theory of the new competition is that no class can profit in the long run except as others prosper.

Under the theory of the old it was inevitable that each class should organize within itself to gain all it could at the expense of the community.

Under the theory of the new, each class will organize in coöperation with other classes to increase the prosperity of the entire community and secure only its fair share of such increased prosperity.

All of which means that the open-price association can be effective only in so far as it advances not only the interests of the trade, but the more general interest of the public.

III

Why does public opinion favor labor unions and farmers' unions and oppose unions of manufacturers?

Each reader will have his own answer, but when sifted to the bottom one very good reason will be found in the tactless manner with which manufacturers have run their combinations.

If dealers and manufacturers endeavor to advance prices they are in direct conflict with customers—the public—and to avoid trouble they must permit those to whom they sell to have some voice in the discussion.

If in certain industries it is better prices should be fixed for given periods as a rational economic step, it can only be done with the full understanding and approval of customers; if prices are to be left to fluctuate within normal limits under the operation of the open-price policy, the pub-

lic should understand why they fluctuate and why it is better they should.

When all these things are discussed in a spirit of frankness the public will be quite as much in favor of fixed prices for fixed periods as it now is in favor of cut-throat competition; it will be as quick to see the economic advantage of stable prices in certain industries as it is to admit the union principle of stable wages and limited hours of employment.

IV

The organization of an open-price association has nothing to do with *fixing* prices in the old sense of the term; its first and principal object is to bring prices and competition out in the open; whether it is better for the community that prices should be fixed and controlled in certain industries, very much as wages are, is an economic proposition that may be discussed profitably by everyone interested after the open-price association has done its first work of making known the conditions of the problem.

Up to the point of trying to regulate prices the members of an open-price association are well within their individual rights; they can dig and delve until every practice is brought to the surface; but when they endeavor to formulate a broad price policy, a policy that will lessen the waste of the old competition, they are on ground where they must proceed with caution, and be sure of the sympathetic support of the public, and the only way to be sure of that sympathy is to take their customers and the public into their confidence.

V

Frequent references have been made to the practice of the Government in purchasing supplies and letting contracts —calling for bids and letting to the lowest without discussion and without revisions.

The practice is *fair* but *not right,* since it often results in getting both supplies and work for *less than cost.*

One of the fundamental propositions of the *new competition* is that, in so far as human sagacity can prevent, no man shall be permitted to sell labor or material below cost.

One of the first steps of the new economy will be to devise ways and means for ascertaining costs of both labor and goods, and men who buy to sell either will be taught to know their costs and make their prices accordingly.

If it is a fundamentally sound proposition that no man should be permitted to sell below cost, then it follows that the Government—the community—of all parties should be the last to adopt a system of buying and contracting that is a direct inducement to men in need of work *to bid below cost.*

The Government cannot afford to appropriate either labor or property by paying less than it costs.

The Government method is *fair* in comparison with the vicious practices of most private buyers, but it is *not right* because it encourages a man to make a losing contract and then holds him to it.

Between the young millionaire who boasted that the tiled roof of his house cost the contractor three thousand dollars more than was paid for it and the Government who compels a poor devil of a contractor to finish a job that costs him three thousand dollars more than he gets for it, there is not the slightest difference—both get and enjoy something that belongs to some one else.

Under existing conditions it is not uncommon to hear and see in print, boasts by Government, State and city officials how they closed contracts so low the contractors lost money, and the public is so blind to what is *right* in buying that it unwittingly applauds such bargains.

In fact, the attitude of the public is that if any man

makes money on a Government contract "there must be something wrong somewhere."

VI

All this must change. It should be the duty of the Government—federal, State, municipal—of every public body—to make sure of two things in all its purchases:

1. Good work and good material, at
2. Fair prices.

Inspection of prices is just as important as inspection of work and material. As it is, the Government inspects to make sure work and material are up to standard; it makes no inspection to see that *prices are up to standard;* on the contrary, the only effort is to depress prices, which is as rational as a like effort to depress quality of work and material.

It is to the credit of many private buyers that they refuse to buy below cost, that they will not permit contractors to do work at less than cost—this is true of far more men than the public knows. No right-minded man cares to accept a present from a man he does not know and who cannot afford to give it; to accept work or material at less than cost amounts to the same thing—only worse.

That contractors try to and do get even on public work by poor work, "extras" and other fraudulent devices, is so notorious it is expected; every public contract has its shadow of evasion and dishonesty. This is so true that many men and companies who make a business of Government contracts have a doubtful reputation; there is always the tacit assumption that their contracts are due to a "pull" and their profits, despite low bids, depend upon practices that will not bear the light.

It goes without saying no public commission can reform

this system by arbitrarily rejecting bids it *thinks* below cost and letting work to the bidder whose bid it *thinks* is fair; that would lead to conditions still worse. It may even be true that all the Government can do is accept the lowest bid, but it should not accept any offer that appears to be below cost without calling the attention of the bidder to the figures and securing from him the assurance—with, if necessary, some demonstration—that he can furnish the goods or do the work at the price and make money.

If he cannot give the assurance, or make the demonstration, his offer should be rejected.

And it should be open to every higher bidder to challenge the lowest bidder's ability to do the work required at the price and get out even.

The practical difficulties in the way of the Government's taking the initiative are obvious, but the work can be done, and done effectually, by open price associations, if the law would permit. Such associations would have no trouble whatsoever in checking up bids and disclosing those that did not cover cost plus a fair profit.

CHAPTER XV

VANISHING INDUSTRIES

I

When the expert is called in to see what, if anything, can be done for a given industry the first inquiry should be whether the industry is a diminishing or a growing industry.

If it is diminishing or vanishing the case is desperate, little can be done; it is not a question of bringing prosperity to all, or even of the survival of the strongest, the problem is how to make death easy, how to gradually close shop after shop, plant after plant, with the least possible loss to owners and community, or how to transform plants and shops into factories for other products.

When the question is put to a group of men, "Is your industry going forward or backward, what is the demand to-day for your products as compared with a few years ago?" it is disheartening when they are obliged to reply, "Ten or twenty years will see our finish," disheartening not so much on their account, because the good business man discounts the inevitable, lays up against what cannot be helped, but on account of the labor and localities involved. Sections of cities, small towns, entire localities, may be affected, even depopulated by the closing of factories, the exhaustion of mines, and it is not so easy for labor and localities to discount the future—they have neither the means nor the foresight.

True, of late years towns and smaller cities are making systematic efforts to diversify their industries so that they will not be wholly dependent upon the prosperity of some one large enterprise. Still there are cities and towns everywhere which depend more or less upon one or more large companies engaged in the same line; if they shut down the entire community feels the loss, if there is a strike all the people suffer.

The cotton and the woolen, and the boot and shoe making towns of New England are illustrations; as are also the wagon making, implement making, automobile making towns farther west, and the mining towns of the far west.

It is bad enough when these industries that are growing shut down temporarily, but the outlook is worse when it is apparent to all interested that an industry is slowly disappearing.

II

It is needless to say that a given industry may be a growing one, and yet factories in particular localities be in a position, either with relation to the supply of raw material or sale of outputs, where they cannot go on; this happens constantly; the condition is akin to that of a store that has to close or move on account of change in neighborhood, or effective competition of establishments more centrally located. This condition may be helped by the expert; by wise coöperation life may be prolonged or death rendered painless.

But where the entire industry is a vanishing one the situation is difficult indeed.

Given a group of men—say ten—representing all the companies engaged in a particular industry, careful inquiry will disclose one of the following conditions:

A. A vigorous youthful industry in which all the plants are growing but in widely varying degrees.

B. An established growing industry in which most of the plants are expanding and fighting vigorously, some stationary and struggling to make fair earnings, others losing and on the edge of bankruptcy—this is the normal condition of three-fourths of the industries of the country.

C. A diminishing industry in which a few plants are fairly prosperous, others barely living, and many in desperate condition.

D. A vanishing industry the end of which is in sight, no one making money, all closing one by one, with as little loss as possible.

Each class presents its own problem—economic and ethical.

Those of the first and second are the problems of prosperity, those of the second and third the problems of adversity. The problems of prosperity are mainly economic —material; those of adversity are mainly ethical—human.

Not that prosperity does not have its great human problems—it does, and they are too little considered—but the point is that when men are prosperous, well fed, well clothed, well housed they give little thought to anything beyond their immediate happiness; it is when adversity comes, when the pressure of life is felt, when work is not so easy to find and wages are not so high, when profits fall off and bankruptcy stares in the face, it is then the profoundest problems of existence demand solution, big, human demands that must be answered.

III

Natural gas is struck in a prosperous farming section; the entire locality is transformed into manufacturing centers; the farmers get big prices for their farms and are

happy; the various industries prosper on cheap fuel; for the time being everybody is so absorbed in making money that no one takes thought of the morrow, of the day when the flow of gas will cease and all the industries be left high and dry for the want of the cheap fuel that is their one advantage.

The more far-sighted among the owners provide against the day of shutting down by laying up money, by accumulating what is, in reality, a sinking fund that takes care of the cost of their plants when they become worthless. But the men and the communities dependent upon the industries, they have no sinking fund, no saved-up earnings to fall back upon; the end of the gas supply means ruin to them, very much the same sort of ruin an earthquake or a vast conflagration would mean, only prolonged.

During the growth of these new industrial centers the problems were mainly economic, largely questions of getting the quickest and largest returns from the natural resources—in short, of making money.

As the supply of gas rapidly, perhaps suddenly, diminishes, and plant after plant is obliged to suspend, the human problem becomes acute.

In press and print stress is invariably laid upon the great loss to capital, etc., etc.—the phrases are familiar; in reality the one feature of the situation worth considering is the human and sociological, the effect upon the individual, the family, the community of the shifting of industrial activity to some distant locality where fuel can be had. The individual may follow, but the family cannot go far, while the community, disordered and disintegrated, is left behind to recover as best it can.

"But these things can't be helped," the puzzled reader exclaims.

Perhaps not, but if not—that is a confession of weakness.

Given economic conditions productive of poverty and misery, only the thorough-going pessimist has the right to say they cannot be helped, and—whether we realize it or not—most of us are optimists, our lives are ordered upon the conviction that things which are wrong not only can be, but will be helped.

To return to the question in coöperation presented by the four classes of industries.

IV

With group A the problem is to devise a plan of co-operation that will eliminate the waste of competition and assure the plants less advantageously situated the work they can do economically and that they are normally entitled to do by reason of their location. The problem is not how to most speedily dispose of the weaker to the end that the larger—and, logically, perhaps one large one—shall control the trade; that might result for a time in a fractional saving on each unit of product, but in the end it would mean a very great loss to the community and disaster to many localities.

With group B the problem is more difficult. Many of the losing plants may have to go, it may even be difficult to preserve all those that are neither losing nor making, but with every man in the business before him the expert will think long and seriously before he says to this man or that man, "I can do nothing for you or the town the prosperity of which depends upon the keeping open of your factory."

Unsympathetic competitors, heartless theorists and economists may say, "What's the use of trying to keep him alive? He can't make any money where he is located."

It may be true that, under the relentless conditions of the old competition, he can make no money and must,

sooner or later, go bankrupt, but there may be a bare possibility that, under the fairer conditions of the new competition, some form of coöperation can be devised that will give a losing company sufficient trade to insure its existence and the moderate prosperity of all the people dependent upon it. This cannot be done in all cases, but it can be done in some and without disadvantage to the consumer, and wherever it can be done by the exercise of human intelligence and human coöperation does it require any argument to demonstrate it should be done, rather than let the brute forces of "cut-throat" competition work unrestrained?

V

In group C we come to a diminishing industry. If it is a question of raw material—as for instance, in certain branches of the lumber business—those who control timber will survive, making perhaps large profits until their timber is exhausted; those that have no sources of raw material must close. It is difficult to devise a form of coöperation that will help this situation. So long as the law recognizes the right of individuals to own or control natural resources the man who is dependent upon such resources and owns none is in a position of hopeless inferiority to one who does. The one obvious step is the removal of every tariff restriction, every unfair transportation obstacle, every let and hindrance to access to raw material the world over; the law can and should do at least that much for factories and localities which, through no fault of their own, face certain diminution of business.

If the falling off in the industry is due to a falling off in demand for the product a very different situation is presented.

With a decreasing supply of raw material prices may ad-

vance to very high levels, all the higher because factory after factory is obliged to shut down. But with a falling off in demand prices steadily fall and plants close in the order of cost of production—those where costs are highest, all other things equal, closing first.

Here would seem to be a group wherein the law of "survival of the fittest" would have to be allowed to take its course.

"How can anything be done?" the academic economist asks.

Possibly nothing under existing laws and social institutions, but look at the situation without prejudice or preconceived notions regarding the sacred character of free and unfettered competition.

Given ten plants engaged in a particular industry, employing, say, ten thousand men upon whom thrice ten thousand women and children are dependent; the industry is a diminishing one; those plants one by one must close; is it to the interest of the community that the death struggle should be so fierce, so vicious, that no one plant shall prosper? or is it better that all should prosper so long as they can, then one after another drop out with a minimum of loss to all interested directly and indirectly, and under such conditions that the survivors down to the last shall continue to enjoy a certain degree of prosperity?

With a diminishing or vanishing industry competition is fierce because hopeless; it is not a fight for profits but for life; it is a cannibal feast wherein the strong slaughter the weak to feed on their flesh.

VI

What is true of group C is even more apparent with group D.

It is bad enough when those engaged in an industry see that it is not growing, that it is probably falling off; it is hopeless when they plainly see that it is actually vanishing, that in five, ten or fifteen years it will be no more.

The cause may be actual disappearance of raw material, locally or generally; or it may be discoveries or inventions that take the place of older processes. Electricity is playing havoc with steam, and electric devices are supplanting many older machines and tools.

In many cases factories are changed over to meet the new requirements, but in others they cannot be and owners face total losses; labor must look ahead to periods of idleness and poverty.

Under existing social conditions and prevailing economic theories most of these consequences cannot be avoided, but some might be if the law permitted and helped.

Given a situation such as described the law should not only permit, but encourage men getting together to face the situation wisely and intelligently.

A government "by the people, of the people and for the people" ought to look out for the people just a little unless the familiar phrase is bombast; it should make even more careful investigations of all industries and occupations than it now does; it should note and publish the first signs of fundamental changes in both demand and supply; it should give the first warnings of impending trouble.

In a measure governments of the most advanced countries do these things—not with any large economic and ethical outlook, but mostly for temporary gain.

A wise government would go farther and when it detects signs of inevitable decay and dissolution encourage the coming together of all interested so that by coöperation disastrous results may be minimized.

In this country state and federal laws forbid coöperation the object of which is to restrain trade, yet with a vanish-

ing industry trade must be controlled and regulated in such a manner that losses will be limited instead of aggravated, conditions ameliorated instead of exasperated.

If ten men are adrift in a boat with food and water for only a few days they do not fight and kill one another and in their struggles waste the little store they have—they do not do that unless they are madmen. No, their one thought is to make the food and water last as long as possible; they coöperate to prolong the life of each.

The biologist might say, "Why don't you strong fellows kill the weak? You will have their shares and live longer."

But they don't; a force far above the laws of evolution stays all beastly impulses.

Why should the ten survivors of a shipwrecked industry engage in a hand to throat struggle to kill one another when by rational coöperation the little business there is may be made to go around until something else can be done; or until by prudent management plant after plant may be disposed of for other uses on fairly favorable terms?

All the expert can say to those men is, "Your situation is desperate, if you continue competing for a diminishing business your situation will become more and more desperate; you will simply slaughter one another. There is but one thing you can do, get together, face the situation as a unit, combine all your sources of knowledge, exchange all information freely so that each may know all there is to know about what the future has in store, then shape your course accordingly.

"The law ought to permit your acting as a unit as regards both producing and selling, but it does not.

"The law ought to help you save what you can out of the wreck of your industry, but it does not.

"The attitude of the law is that of the biologist—'Kill the weak, you strong ones—and then kill each other,' ha!"

VII

Meanwhile these diminishing and vanishing industries can do something to help themselves in open-price associations—not much but something.

It will help for each to know what the others are doing both in the way of business and prices. Losses may be lessened to some extent. Friendly association will develop a "give and take" spirit that will modify some of the more vicious features of competition.

At the same time it must be confessed the outlook will be dismal at best; without such firm coöperation as the law does not now allow, competition cannot be otherwise than disastrous. Men who must have business to live will bid to get it, considerations of cost will not deter them, much less considerations for competitors—nothing will restrain them.

Association will yield this one advantage, where a man knows the condition of his competitors and the extent each will go in a desperate fight for business he will be in a position to keep out of the fiercer competition, to exercise some judgment, and he will realize the inevitable all the sooner, he will realize the futility of hanging on until all his money is lost.

The isolated manufacturer is in a position of serious disadvantage, he seldom meets the men who keep track of what is going on and often he clings to methods either actually out of date, or that are about to be superseded by improved processes; he is at the mercy of all his competitors who are better informed.

As a center for information, a place for exchange of views, the association has a commercial as well as a social value—it means a saving of money to all who belong.

In these and many other ways the open-price association with its atmosphere of frankness and coöperation can help even diminishing and vanishing industries, but by no means to the extent it helps growing.

CHAPTER XVI

WHAT IS A FAIR PRICE?

I

What is a fair price?

"Cost plus a reasonable profit," the seller will answer.

But the average buyer will quickly reply, "I do not care anything about your cost or your profit, the only price that interests me is the market price—the price I have to pay."

"But," the seller urges, "the market price may be either far above or far below a fair price, it may yield me an exorbitant profit, or it may mean a disastrous loss."

"I can't help that."

"Yes, you can to some extent; if buyers will only cooperate with sellers to control so far as possible the violent fluctuations that are bad for both."

And the practical question is, to what extent can that be done?

II

A great many writers have dealt with the subject of price, but all that has been written on the theoretical side since the days of Adam Smith has been but little more than refinements upon the conclusions reached by him in Book I of his famous work.

Natural Price and Cost—"There is in every society or neighborhood an ordinary or average rate, both of wages

and profit in every department. * * * There is likewise in every society or neighborhood an ordinary or average rate of rent. * * * These ordinary or average rates may be called the natural rates of wages, profit and rent, at the time and place in which they may commonly prevail.

"When the price of any commodity is neither more nor less than what is sufficient to pay the rent of the land, the wages of the labor, and the profits of the stock employed in raising, preparing, and bringing it to market, according to those natural rates, the commodity is then sold for what may be called the *natural price*. The commodity is then sold precisely for what it is worth, or for what it really costs the person who brought it to market, for though in common language what is called the prime cost of any commodity does not comprehend the profit of the person who is to sell it again, yet if he sells it at a price which does not allow him the ordinary rate of profit in the neighborhood, he is evidently a loser by the trade; since by employing his stock (capital) in some other way he might have made that profit.

Market Price.—"The actual price at which any commodity is commonly sold is called the *market price*.

"The market price of every particular commodity is regulated by the proportion between the quantity which is actually brought to market, and the demand of those who are willing to pay the natural price of the commodity, or the whole value of the rent, labor, and profit, which must be paid in order to bring it thither. Such people may be called the effectual demanders, and their demand the *effectual demand;* since it may be sufficient to effectuate the bringing of the commodity to market. It is different from the absolute demand. A very poor man may be said in some sense to have a demand for a coach and six; he might like to have it, but his demand is not an effectual demand.

Supply and Demand.—"When the supply of any com-

modity falls short of the effectual demand" some will be willing to give more than the natural price and "a competition will immediately begin among them, and the market price will rise more or less above the natural price, according as either the greatness of the deficiency, or the wealth and wanton luxury of the competitors, happens to animate more or less the eagerness of the competition.

"When the quantity brought to market exceeds the effectual demand, it cannot be all sold to those who are willing to pay the whole value of the rent, wages and profit, which must be paid in order to bring it thither. Some part must be sold to those who are willing to pay less, and the low price which they give for it must reduce the price of the whole. The market price will sink more or less below the natural price, according as the greatness of the excess increases more or less the competition of the sellers, or according as it happens to be more or less important to them to get immediately rid of the commodity. The same excess in the importation of perishable, will occasion a much greater competition to get rid of, than in that of durable commodities.

"When the quantity brought to market is just sufficient to supply the effectual demand and no more, the market price naturally comes to be either exactly, or as nearly as can be judged of, the same with the natural price.

"The *natural price,* therefore, is, as it were, *the central price,* to which the prices of all commodities are continually gravitating. Different accidents may sometimes keep them suspended a good deal above it, and sometimes force them down even somewhat below it. But whatever may be the obstacles which hinder them from settling in this center of repose and its continuance, they are eventually tending towards it."[1]

[1] Book I, Chapter VII. The italics and the words in parenthesis are the writer's.

III

Adam Smith's definition of a *fair* or "natural" price is as good as any that can be found in so many words, but while the paragraphs referred to seem to lead to definite conclusions because they are precise in terms, careful analysis shows they are little more than graphic descriptions of what takes place under the eyes of every housewife who buys of her grocer. She pays the price asked for the things she wants; whether that price covers cost or not she does not know or care, all she knows is that if she sells eggs she receives what she thinks is the highest market price, if she buys butter she pays what she thinks is the lowest market price—she may find out too late that prices vary considerably in the next street, or that a neighbor the same day received more for her eggs and paid less for her butter.

IV

The "Wealth of Nations" was published in 1776. Let us skip a century and a quarter and see what, if any, advance has been made over Adam Smith's propositions.

A recent writer [1] sums up the law of supply and demand as follows:

"1. As the price of an article increases the quantity demanded tends to diminish and the quantity offered tends to increase. There will thus in ordinary cases be a certain price which 'clears the market' and makes the two equal.

"2. This price will, theoretically, be reached by free competition. For so long as the supply is in excess of the

[1] President Hadley of Yale, in the Dictionary of Philosophy and Psychology, vol. II, pp. 623-4. Compare also article on Value, vol. XXII, Encyclopedia Britannica, 11th edition.

demand, sellers will be in danger of having unsold goods left on their hands, and will compete to bring prices down; but if the demand is in excess of the supply, buyers will be in danger of having wants unsatisfied, and thus competition will force prices up, thus producing an equation of supply and demand.

"3. The prices thus fixed tend to be proportional to the expense of producing the several articles in the market. For if the market price of one article offers a higher rate of profit than the market price of another, investors will gradually abandon the production of unprofitable goods, and put their capital into the line which promises the higher rate, thus increasing the supply and diminishing the price at which it can be sold.

"4. The equation of supply and demand is thus a double process. First, a temporary adjustment of the demand to the supply by the commercial competition of merchants, which lowers (or, in the converse case, raises) the price until it corresponds to the marginal utility, i. e., until it becomes just worth while for customers to take the whole supply at the price in question. Then there is a more permanent though less accurate and universal adjustment of the supply to the demand, by the individual competition of investors, which lowers, or raises, the price until it becomes proportionate to the marginal expense of production, i. e., until it becomes just worth while for producers to meet the whole demand at the price in question.

"This is the theory of supply and demand as developed by the English economists from Smith to Cairnes."[1]

[1] President Hadley refers to the mathematical form of expression attempted by Cournot (1838), Jevons (1871), and Marshall (1890). See also "Measurement of General Exchange Value," by C. M. Walsh.

V

From the foregoing summary of the work of a century and a quarter it is plain the theory of supply and demand and of price has not advanced a hair's breadth beyond that formulated by Adam Smith; subsequent writers have simply rung the changes on the theme he furnished; his comparatively simple propositions have been almost lost in a wealth of ingenious refinement. He was content to describe things as he saw them and formulate certain general propositions; his successors, most of them, have retired from the market place, from actual observations of daily happenings, and in the seclusion of the closet attempted to reduce his generalizations to mathematical propositions and give them the semblance of laws.

When the interminable discussion of the "theory" and the so-called "laws" of supply and demand ceases for a moment the producer who is selling below cost facing ruin, or the buyer who cannot get what he needs except at exorbitant prices, asks, "Well, gentlemen, what then? Granting all you say, how does it help my case?"

The professional economist rouses himself from his abstractions long enough to reply, "My dear man, you must not bother me, I am not interested in you individually, you simply happen to be one of the many victims of the free competition that is essential to the proper operation of the law of supply and demand, your ruin is merely an incident of economic progress."

"But I don't wish to lose all I have in the world."

"Naturally, but it can't be helped, free competition—"

"D—— free competition."

"Oh—oh—that is blasphemy."

VI

When Adam Smith said, "It is *to the interest* of all those who employ their land, labor, or stock, in bringing any commodity to market, but (that) the quantity never should exceed the effectual demand; and *it is to the interest* of all other people that it never should fall short of that demand," he was very close to the *human,* the *vital* side of the problem he was discussing, but he did not follow the matter further, and from his day to THIS scarcely an economist has devoted time and thought to the really great problem of *intelligent control* of so-called "economic laws."

If it is *to the interest* of the community that supply and demand should be maintained as nearly as possible in a state of equilibrium, then it should be *the business* of the community to devise ways and means for controlling the violent fluctuations due to free competition.

In every country town the prices of small products of the farm are the result of "free competition." When the weather is fair farmers "come to town" in such large numbers and bring so much to market, prices drop to absurdly low figures; when the weather is bad little is brought in and prices go up to absurdly high figures. One year there is a shortage of crops and prices soar, the next, under the incentive of the high prices of the year before, a larger acreage is planted, the season is good, crops are abundant, and prices drop to a level that yields many farmers less than cost.

What are farmers doing to help these conditions? Are they meekly submitting to the "law" of supply and demand? Are they content with the doctrine of "free competition"? Not at all: they read and are guided by government crop reports; they are forming coöperative societies to control competition, to introduce rational and scientific supervision over

both production and marketing to the end that prices may be more stable and returns more constant.

VII

"Market price" is a statistical proposition, it has no real, no tangible existence aside from tables of averages.

What an article sells for is *its* price, whether it is the market price for similar articles depends upon an average struck from a number of sales.

Tables of averages and variations are of value; they furnish data not only for conducting business, but for controlling competition. They should be compiled for every industry and every locality, and carefully studied. To a certain extent the government does this, but on so large a scale the figures, when published, are of little real assistance to the individual farmer and manufacturer, they do not help him to make up his mind what he should do next week, next month.

VIII

The prevailing price for certain plows may be $20.00.

Three makers supply the market, and the plows they make are so alike it is immaterial to users which they buy.

Each plow costs A, a new-comer, with his smaller plant, $20.00 to make; B, with a larger output, $19.00; C, with a very large output, $18.00—what is the *fair* price for those plows?

At $20.00 it is but a question of time when A will go out of business; B is making only fair returns on his investment; C with his larger output is making large profits.

If A goes out of business the price of plows will advance materially; if he is to remain in business they *must* advance.

Under free competition A hovers on the edge of bank-

ruptcy; if he closes down temporarily, plows advance to $21.00 and he immediately starts up, when the price drops again to $20.00. He is on the ragged edge of industrial starvation.

This is no fanciful illustration. It is the normal condition of the industrial and commercial world; it is the condition described by Smith; it is the "margin of cultivation" of Ricardo and writers upon agriculture and rents; it is recognized in the phrases "marginal increment," "marginal utility," etc.

Under free competition fluctuations in supply and demand are sudden and wide, as the most cursory study of price charts demonstrates.

The inevitable result is that the margin of instability in every occupation and industry is very wide, wide in direct proportion to the freedom of the competition, narrow where competition is controlled.

The practical question for the community to consider is, whether it is better to broaden this margin of instability—of loss and disaster—by encouraging still greater freedom and recklessness of competition, or narrow the margin of instability by controlling competition.

Is it to the interest of the community that plows should be sold at $20.00 until A is ruined and then go to $22.00 or $24.00, where possibly they were before A started in; or is it not to the interest of the community to pay $21.00 and keep all three makers in business?[1]

IX

Statistics show that a given steel industry has a "boom" period on an average but once in five years, the four years

[1] Taking, perhaps, some of the increased profits of B and C by an income tax. This means of equalizing conditions is always open, and, in time, will be worked out on a scientific basis.

range from dull to the point of disaster, the business is a "feast or a famine,"[1] yet such is human nature that the one good year invariably leads to a large increase of capacity in additions and new plants; new men and capital rush into the business, all of which means large losses in the "lean" years certain to follow.

It is not surprising the *individual* who is ever sanguine should make foolish investments, but it is surprising that experience has taught the *community* so little it encourages the individual to do things that mean loss of time, labor and money, and the demoralization of an entire industry.

The community does not seem to appreciate that:

All losses in unproductive and unremunerative enterprises are borne by the community.

The argument that the public may profit by the demoralized prices that prevail for a time is more specious than sound, it amounts to the proposition that the community profits in the end from commercial savagery, from the ruin of its members, which, if true, would lead to the pessimistic conclusion that the community and its commercial code are both depraved—a conclusion reached by many a teacher of men from Christ down.

X

There is still another aspect to this price question.

In the operation of a gas plant for lighting there is always a period in every twenty-four hours, usually the early evening hours, when the consumption of gas is at its maximum—this point of highest consumption is the "peak load."

The peak load in a lighting plant is not the same for each

[1] This is true in nearly all branches of the iron and steel trade, as well as in many other industries, far truer than it is in farming, for the farmer can count on more good crops, or high prices, for smaller crops, than any steel manufacturer can upon good years and good prices.

twenty-four hours of the year; it varies, increasing with the short, dark days of winter, decreasing with the days of spring and summer; the peak for the year may be the three hours from 5 p. m. to 8 p. m. the day before Christmas, but whenever it comes, the plant must be equipped to meet it and the cost of carrying this excess of capacity is borne by the community in the price of gas; the community recognizes its obligation to those who own the plant, for whether the plant is owned by the municipality or a private corporation, the cost of maintaining it to meet the maximum demand is the same.

It is comparatively easy and inexpensive to equip a gas plant to meet variations in consumption, for gas can be stored; the huge gas tanks that loom up in every town are the reservoirs built to hold the gas that is manufactured steadily during the twenty-four hours.

An electric light plant is subjected to the same sudden and wide variations in demand, it must be built to carry the same peak load.

The plant is costly to install and maintain, the storage of electricity is not so easy as the storage of gas, hence all well-managed electric companies try in every possible way to increase the consumption of electric energy during the day, to encourage the use of electricity as a power. Gas companies are doing the same thing for gas, and between the two builders of small steam engines are having a hard time.

But whether a plant is operated at its maximum three hours or fifteen, the cost of operation and maintenance of the extra capacity required to meet the peak load is borne by the community in the prices charged.

In these instances the community admits without question its obligation to insure a profit upon the equipment necessary to meet wide fluctuations in demand.

XI

The supplying of gas and electricity has been used as an illustration, not because there is anything exceptional about the industries, but because everybody is familiar with the conditions under which they must be operated.

What is true of lighting plants is true in greater or lesser degree of every industry. *The productive capacity of each must be sufficient to meet its peak load.*

The merchant must provide floor space, goods, salesmen, delivery wagons sufficient to take care of his customers during "rush" hours and busy seasons, otherwise he loses trade.

The manufacturer must provide plant and facilities to meet the demands of his trade during perhaps three busy months of the year, and one good year out of three or four.

What is the inevitable result of the tendency in every industry to expand to meet the requirements of "boom" times?

In all years except those of maximum demand, capacity so far outruns the market that fifty or seventy-five per cent. is idle.

Nothing is more common than to hear the complaint mournfully reiterated by intelligent manufacturers.

"The trouble is there is too much capacity, too many mills."

Yes, but when the peak load comes every mill works night and day and the same men spend millions in additions, only to shut down in a few months and relapse into the chronic condition of over-capacity.

If the consumption of electric power and light were constant throughout the twenty-four hours no over-capacity would be required, but as it is not constant, the over-capacity

made necessary by variation in load must be provided and is, therefore, *normal.*

If the demand for manufactured goods were constant from year to year, there would be no need for over-capacity, but as the demand is not constant in any industry the over-capacity necessary to meet the peak load is *a normal condition.*

Railroads must have tracks, cars and equipment to take care of "bumper crops"; if they fail, farmers make their complaints heard in legislatures and by railroad commissions—laws are passed, fines imposed.

Iron and steel companies must maintain hundreds of millions in idle furnaces and mills, waiting for the "boom" that is years in coming; if they do not, and prices soar as the result of unexpected demand, the consumer complains and makes his complaints heard in the press and before investigating committees.

XII

So far we have spoken of the over-capacity normally necessary in every industry to meet the peak-load as if it were simply a question of plant and equipment capacity—of idle capital during the long periods when the maximum output is not demanded; but the matter is more serious, it is not simply a question of idle capital, but also of *idle labor.*

To a certain extent—though only to a certain extent—the capitalist, the plant owner, can look ahead and provide against the certain coming of dull and bad times, then when such times do come he shuts down and reduces his cost of maintenance to the two items of interest on his investment and depreciation, but how about labor? It cannot shut down, it cannot reduce expenses very much, it must live, and everybody knows how hard it is for labor to get along during the long periods of depression while waiting for

"business to pick up," for the fires to be lighted and the wheels to be set in motion.

So wasteful and improvident is the economic organization of modern society that to meet its demands, to carry its peak loads—many due largely to whims and unrestrained impulses—a large percentage of the capital and labor in every industry, practically every occupation, must be maintained in idleness from a quarter to three-fourths of the time. And so indifferent is society to its moral and economic obligations during these periods that it sees capital rust and labor starve with callous indifference, complaining bitterly if both are not ready to respond when the stress comes, when the community experiences what is fundamentally a psychological condition—the "buying fever."

XIII

Generally speaking prices of farm products rise and fall *with* cost, while prices of manufactured goods rise and fall *inversely* to cost.

The one is a *normal and sound* response to conditions, the other is an *abnormal* and *unsound* response.

If crops are short the cost per unit—per bushel—is high and, other things being equal, *prices* are *high;* and *vice versa* if crops are abundant.

If the output of manufactured goods is *low,* cost per unit is *high,* but prices are *low,* and when the output of goods is at the maximum cost is *low* and prices *high.*

To verify these propositions by appeal to statistics would involve an exhaustive analysis of market conditions throughout the world, for prices of staple agricultural products in a given country are affected not only by the output of the country but by the crops and market conditions in all other countries; but every farmer and every manufacturer knows

the truth without going beyond their own personal observations.

The farmer knows that if on the same acreage and with the same labor he produces but two bushels of wheat where the year before he produced three, his cost per bushel is higher, and if farmers throughout the country have had no better success, the price of wheat will be higher, how much higher will depend a good deal upon crops in other countries.

Per contra if the same acreage and labor yield five bushels as against three the year before, the cost per bushel is lower, and, other things being equal, the price will be lower.

The manufacturer faces the exact reverse of these conditions; his prices move inversely to his costs.

It being conceded that a fair price should cover legitimate cost plus at least some profit, it follows that *prices should vary with cost and thus ordinarily be higher when the output is low, and vice versa.*

But—as noted by Adam Smith—*the exact reverse* obtains. As demand falls and output is curtailed prices invariably fall.

The condition is a curious illustration of the tendency of men to accept as right and natural any evil, however great, if it is of long duration.

That prices should drop as cost advances and rise as cost drops is a *fundamentally unsound condition,* yet because such has been the result of the old unrestricted competition from time immemorial, the very people who suffer most, employers and employees, tamely acquiesce.

If the community were organized on a socialistic basis, *prices would rise and fall with cost;* the state would not commit the folly of selling goods cheaper and cheaper as they cost more and more; nor would the people permit the state to charge higher and higher prices as cost dropped lower and lower.

In cities that make any pretence of managing their gas or water plants on a business-like basis, charges for gas and water rise and fall with cost of the service; in the best municipal plants this is the case, and *in no municipal plant are prices advanced as consumption increases and costs drop.*

Why should not the same rule obtain in private enterprise? Why should not men be encouraged to co-operate to control the ancient "law" of supply and demand, and keep prices as constant with relation to cost as cities try to do in their industries?

XIV

Demand is a *desire* backed up by the ability to give something to satisfy the desire—it is a *psychological* and emotional state; it is a human longing.

Supply is a *material,* a *physical* proposition; it is the physical response to a psychological state, the objective response to a subjective condition. There is no such thing as supply without demand, and there is no such thing as demand without supply.[1]

No man offers a supply of anything in the market without wanting something for it, and the amount of goods or services he is willing to part with depends upon the strength of his desire for what he is to receive, money or the things money will buy, and not upon the strength of some one else's desire for the goods or services in question.

"Supply" and "demand" are commonly discussed as if two contending and independent forces were forcing the market this way and that, as if at one period a large quantity of goods was being pushed upon a market devoid of "demand," and at another a huge "demand" sprang up in

[1] It is needless to say that it is the "effective" demand, defined by Adam Smith, that is here referred to, as distinguished from vague desires and vain imaginings that are not backed up by the offer of anything for their satisfaction.

the absence of "supply," whereas the truth is "demand" and "supply"—strictly speaking—are ever constant and equal, but shift in two distinct ways:

1. From object to object, or from one class of objects or services to another.
2. From all objects and services to money.

Changes of the first class occur frequently and are due largely to changes in taste, to whims, fancies. The automobile "craze" is an illustration; it has seriously affected the vehicle industry. But while these shiftings of "demand" depress certain industries and build up others, they have only a remote bearing on good times and bad, on panics and "booms."

It is when, for some reason difficult to ascertain, the public suddenly lessens its demand for all services and all goods and increases its demand for money; suddenly ceases to spend freely and begins to hoard, that "hard" times are precipitated.

It is common to speak of the "public" as if some great body made itself felt in the market; in reality the change referred to has its origin in the individual, the farmer, the laborer, the merchant, the manufacturer.

A strange wave of pessimism sweeps over the country —induced possibly by some comparatively insignificant cause—and every man suddenly wishes to sell what he has and hoard the money, accumulate credit, against some catastrophe he fears but cannot describe.

XV

Changes in demand from this article to that, though attended with loss and inconvenience, cannot be helped very materially. Twelve years ago no one could foresee the

amazing development of the demand for automobiles, any more than thirty-five years ago any one could foresee and prepare for the development of the bicycle industry. The flying machine may revolutionize warfare and all the machinery of warfare. Some yet undiscovered source of energy may render useless all types of engines now in use; but happily these changes almost invariably result in highly —though often artificially—prosperous times. These changes cannot be helped; they would occur in the socialistic or Utopian community.

Far more serious results follow the sudden shifting of the demand of the entire community for objects and services to the demand for money—in other words, from the normal daily consumption of objects and services, to the accumulation of power to command the same; it is this condition that should be studied systematically and remedied in so far as it can be; it is the cause of all panics, *it is a panic.*

It is primarily a psychological problem, and not at all one of supply and demand as commonly understood.

Actual production has very little to do with the matter. Crops may fail, great disasters occur, immense wealth be destroyed in one way and another without causing "hard" times or dull times; a "boom" may even follow a serious shortage of crops. *Per contra,* out of a clear sky, when the country is actually producing more wealth, more food, more clothing, more luxuries, more gold and silver than ever before, there may come in a month, a week, a day, a *feeling of fear* and, as if by common consent, the people from the Atlantic to the Pacific begin trying to get rid of whatever they have to sell and accumulate money. A "panic" *is a money and credit proposition;* it could not occur where barter prevails; a medium of exchange is necessary to a panic, for the panic is over the medium of exchange and involves the destruction of credit.

Something will yet be done to prevent these "panics," but that is a large subject and aside from the one in hand.

For the present it may be assumed that panics, hard times, dull times, good times, and "booms" will follow one another periodically—the circular insanity of the commercial world.

That being so, the practical question is: What can be done to mitigate the evils of these extreme fluctuations?

By legislation very little can be done, by coöperation a great deal may be done, and without coöperation nothing can be done.

For instance, an industry equipped with plants and labor to meet a given peak load may do one of three things to bridge the time when its maximum output is not in demand.

If the character of its output permits,

1. It may do as the gas company does, continue to manufacture steadily and store its product until the demand comes. This can be done, and only in a measure, by comparatively few industries.

2. It can seek new markets, as the electric light company seeks to create a demand for electric power during the day. This is done by quite a number of industries, notably some of the steel companies and a few other large producers who systematically endeavor to develop their foreign trade, even going so far as to sell abroad lower than at home to get rid of the surplus that inevitably accumulates if plants are operated full and labor kept employed in dull times.[1]

3. It can shut down and wait—which is what most plants do in whole or in part.

[1] This "dumping" of goods by one country on another is absolutely indefensible from any point of view; it is unfair to the country that sells, and doubly unfair and demoralizing to the country that buys. It works to the disadvantage of the small producer in both countries. It would be exceedingly difficult to reach and suppress the practice by law, but coöperative associations, national and international, with the aid of the law, may suppress it.

The first two courses imply attempts to maintain prices above ruinous levels, but so few industries can either store their products or sell abroad that in the maintenance of prices generally their efforts are negligible.

It is the "over-production" that precedes the shutting down, and the shutting down itself that play havoc with prices; they fall when they should be higher; the unfortunate producer is a loser at both ends, in higher costs and lower prices.

In a measure this condition may be controlled by the co-operation of all in the industry. An association could regulate both output and prices; it could so apportion what business there is that all plants would be kept in operation to a certain extent, and it could arbitrarily advance prices as costs rise so that for whatever goods were sold fair prices would be realized.

As the law now stands such acts would not be legal, but the time will come when they—or some other stringent regulations to accomplish the same ends—will be approved by the public.

XVI

It will not be long before the country will recognize its obligations, economic and moral, to men—employers and laborers—who, in response to the needs and desires of the country, *hold themselves and all they have* in readiness to supply the maximum demand, the peak load. The country will not only permit them to, but will insist they shall, get at all times fair prices for products and services, and fair prices mean prices which cover all the risks and losses incidental to the enterprise through both good times and bad.

If, by way of illustration, an association of manufacturers of staple cotton goods steadily advanced prices as out-

put fell off and costs advanced, how long would it be before buying would begin again?

It may sound paradoxical to say buying would be stimulated by advancing prices, but it always is under normal conditions; it is human nature for a man to buy when he *sees* prices are going up and *thinks* they are going higher; it is also human nature to stop buying when he *sees* prices dropping and *thinks* they are going lower.

There is, of course, always a point at each extreme where the tide turns, but, generally speaking, there is nothing so stimulating to buying as a rising market, nothing so discouraging to buying as a falling market.

In fact, the rising market is largely due to the stimulated buying, and the falling market is largely due to the holding back of buyers, each waiting until he thinks the bottom is reached.

The arbitrary adjustment of prices to cover costs would do more than any other one expedient to stabilize prices and keep the market at a constant level.

With prices adjusted to costs, buyers would *know* that every decrease in demand would mean higher costs and *higher prices*—hence, there would be no object in holding off; on the contrary, there would be every incentive to buy and restore the equilibrium.

Business will not be on a sound economic basis until prices rise and fall with costs.

XVII

The word "fair" in connection with price lacks virility; it not only admits but invites debate; it suggests possibilities of variations.

A *fair* price is a *right* price, and the *right* price depend-

upon conditions that are susceptible to scientific investigation.

Price is fundamentally a *scientific proposition.*

The scientific side to the question of cost has long been recognized. Men are being taught slowly but surely that cost is not the haphazard proposition our fathers supposed it was, a mere matter of adding together all outlays and calling the total "cost." The problem of cost is receiving profound consideration, and its difficulties are beginning to be appreciated. What is cost to an individual is not cost to a community; what is cost to one section of an industry is not cost to another; what is cost in one locality, or country, is not in another; what is cost one year is not another—and so on.

But the more elusive the solution the more interesting the problem. The outcome depends upon systematic investigation, and such investigation will be best promoted by coöperative organizations, under Government supervision.

Ultimately certain rules will be laid down for the ascertainment of

1. Costs to the individual.
2. Costs to the industry.
3. Costs to the community.
4. Costs to the country.
5. Costs to the world.

Standard systems of cost accounting will be adopted and their use required, to the end that individual enterprises and entire industries may make, when required, reports of uniform value, and be subject to easy and speedy investigation.

As the problem of cost, which is of first and fundamental importance, is worked out, the question of price naturally follows.

Whether a man shall be permitted to add little or much to his cost by way of profit, one thing is certain, *the right price never falls below cost.*

The community has a direct and vital interest in maintaining prices above cost.

When a man is detected selling goods below cost his conduct should be as promptly and rigidly investigated as if he were detected in secreting goods to defraud his creditors—the offenses are akin.

XVIII

When a merchant, a manufacturer, or a farmer fails the public looks upon his misfortune as his own, and passes on.

This indifference of the community to the prosperity of its units is a curious phenomenon for one would think that the whole would realize its welfare depends upon the welfare of its parts, that every unit which fails to support itself is a burden upon other units and a debit against the resources of all.

The man who watches his neighbor's house burn and congratulates himself that his own has escaped seldom stops to think that, while the loss falls in the first instance on his neighbor, secondly on the insurance companies, if there be insurance, the real loser is the community; if there is insurance the loss will be distributed in its rates, but whether distributed or not the country is out just that much useful property, property into which the time and labor of the community went.

The losses due to wasteful and ruinous competition, to foolish and reckless investments, to selling below cost, are all borne by the community the same as losses by fires.

In 1910 $214,000,000 worth of property was destroyed by fire in the United States. In the same year there were

failures with liabilities amounting to over $201,000,000. The assets probably did not realize more than a small percentage of that gross amount.

On the face of the reports it appears that the losses due to wasteful business methods almost equal losses due to fires; as a matter of fact they are far greater, for of the men who lose in business and who are driven out by competition, comparatively few publicly acknowledge their failures and plead bankruptcy. By far the larger number manage to pay their debts and retire quietly, but because they "pocket their losses" and say nothing the effect upon the wealth of the community is not changed.

The pedler who buys a clock for $10.00 and at the end of the week sells it for what he paid for it, is out a week's time and his support for that period, and the community is out the same.

When a man inherits $100,000 and invests it in a farm or manufacturing business he invests what is nominally and legally his, but what is in reality part of the accumulated capital of the community, capital created by the preceding generation; if he loses it all he is no poorer than he was when he inherited it, but the community is poorer by the hundred thousand plus the waste of time and plus, *what is of greater consideration,* losses due to demoralization of the particular business caused by the ignorant and inefficient efforts of the man who failed.

In a sentimental way the interest of the community in the welfare of its citizens is recognized and asserted oratorically and rhetorically, but the time is speedily coming when this interest will be asserted practically. For a long time the community has maintained expensive fire departments to prevent or minimize losses by fire; in time it will see the wisdom of maintaining departments to prevent or minimize losses by failures. As it is now this country does its best to aggravate the conditions that produce failures; laws

are framed that forbid men doing the things that prevent failures; recklessness, wastefulness, inefficiency in business are encouraged, and when failure results, as result it must, an easy way of escape from individual responsibility is provided by the bankruptcy law, which says to the man who has lost his own and his creditors' money and who, by his reckless methods, has caused far greater loss to men trying to do business on a sound basis, "You need not pay your debts, you are free to find other creditors and start in all over, to fail again—and as often as you please."

The time will come when the community will take at least as much care to prevent failures as fires, and when a failure does come it will sift to the bottom the question of responsibility.

It may yet be made a crime to sell goods below cost.

CHAPTER XVII

THE TRUST PROBLEM—SEGREGATION VS. DISINTEGRATION

I

"What shall we do with the trusts?"

"Smash 'em," the man in the street cries.

"Regulate them," the more conservative citizen responds.

"Put them under government control," the politician suggests.

But if an independent competitor of one of the great trusts should be asked the question, if a thinking man, he would quickly answer:

"Compel them to make money."

"What!"

"I mean what I say; as an independent all I ask is that the big corporation be compelled by law to make money."

"Why, what do you mean?"

"That if they make money I can. In fact, I can make money when they lose—if they don't lose too much."

"But they do make money."

"Yes and no—yes where they have a control—no where they compete with me or some other independent."

"I don't understand——"

"Neither does the public—that's just the trouble. If the public did understand instead of crying for *disintegration* of the trusts, which is a senseless proposition, the cry

would be for *segregation,* which is the solution of the problem."

II

Everybody knows what disintegration means, it means dissolution—"smashing 'em," in the language of the street.

The Standard Oil Company has been disintegrated into some thirty-five more or less—chiefly less—independent and supposedly competing companies.

The Tobacco Company has been disintegrated into fourteen more or less independent and—supposedly—competing units.

The net result to the public so far has been higher prices for many of the products of the one and no lower prices for any of the products of the other.

The net result to many small stockholders has been losses.

The net result to "insiders"—the men against whom public clamor was raised—has been golden opportunities for profit in the buying and selling of subsidiary stocks long before stockholders and the public could possibly form any accurate notions of their real value.

To illustrate—when the Standard Oil Company of New Jersey—the trust—was dissolved by order of court the stockholders of that company received *pro rata* fractional interests in all the subsidiary companies, and for the first time thousands of men and women all over the country learned of the existence of those thirty-five companies. By no possibility could these scattered stockholders form accurate opinions regarding the values of the fractional shares issued to them; only the men in control of the industry were in a position to know. What has been the result? The stockholders and public have sold and bought in ignorance, losing both ways. Take the Standard Oil Company of In-

diana, one of the subsidiary companies. It was capitalized at $1,000,000; the amount cut no figure so long as all its stock was held by the trust, but when the trust was dissolved its many stockholders received each his fractional *pro rata* share in the Indiana Company. There was a general impression the stock of this company was worth far more than par, but how much? Only the insiders could tell. As a result many stockholders who were in the dark sold their interests at less than a fifth of what the stock sold for inside a few weeks.

A few days ago the Indiana Company voted to increase its capital stock from one million dollars to thirty millions and to distribute the $29,000,000 to its stockholders as a stock dividend, and it now appears that the company is earning at least ten millions a year, or 33 1-3 per cent. on the new capitalization, but it is stated in the press the "Officers refuse to give any information on this point." [1]

Disintegration of trusts and large corporations *simply because they are large* is a senseless proposition, because both are here to stay in some form, both are evolutions, products of modern industrial conditions; like the labor unions, they are simply forms of coöperation and, rightly used, ought to be of value to the community as factors in production.

The Sherman law was passed in 1890. For more than ten years few attempts were made to enforce it against large corporations. Then, in response to popular clamor, due to many flagrant abuses, came a period of indiscriminate "trust-busting." Already there are signs of reaction; the pendulum is swinging back; it is found the Sherman law

[1] Courts should provide in decrees of dissolution that *before* the plan of reorganization and redistribution of securities is announced, detailed information, verified by independent auditors, regarding each subsidiary company should be sent to all stockholders and published, so that no man would have an advantage in buying or selling the securities affected.

hits large and small, good and bad, labor unions and capital unions alike. At best the law is a *destructive measure,* and the demand now is for *constructive legislation.* But this demand so far has not assumed any very definite shape.

III

What does "segregation" mean?

The *disintegration* of a trust means its dissolution into its component parts and the destruction of all ties between those parts, *segregation* means simply such an isolation of all parts as will enable competitors and the public to see clearly what each part is doing, without destroying the ties that bind the parts into one whole.

Under segregation the trust, or large corporation, remains intact, but in the operation of its different companies or branches and in producing and selling its different lines of products it is required to keep its accounts and make its reports in such a manner that each will stand by itself and be subject to easy investigation and ready comparison.

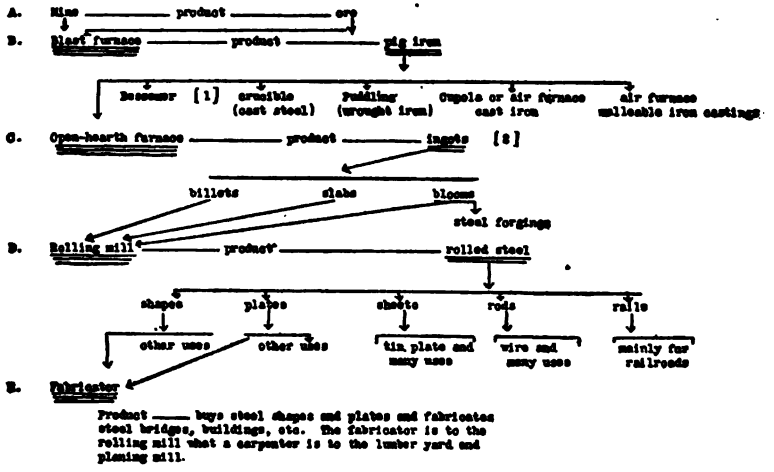
Segregation is entirely a matter of accounting and management, it does not necessarily affect ownership.

The proposition is simple because every well-managed corporation already segregates its different units and branches in its accounting, but no outsider has access to the facts.

The conduct of a large corporation may be so unfair and oppressive as to call for disintegration, forfeiture of charter, as a punishment; but, generally speaking, segregation will accomplish far more and with less loss to innocent parties.

IV

The production of a finished steel product, such as a steel building, may be roughly schematized as follows:



[1] The Bessemer process is also used by rolling mills, but not to the same extent as open-hearth, and there is a combination of the Bessemer and open-hearth, called the duplex process, but it would needlessly complicate the diagram to show every step and every line of relation.

[2] Ingots are "pig-steel," so to speak, but, unlike pig-iron, they are not allowed to cool, but are immediately rolled and cut into billets, blooms and slabs, which are the raw material for various rolled and forged steel products.

Reading up each factory is wholly dependent upon the preceding. E must buy shapes and plates from D; D must buy billets, slabs, and blooms from C; C must buy pig-iron from B; B must buy ore from A.

Reading down there is not the same degree of dependence save in the case of the mine, A, which has but one customer, B, the blast furnace. The others have several outlets for their production. As between D and E the rolling mill turns out so many different products from tin

plate and wire rods to rails that it is virtually independent of the fabricator and may deal with him quite arbitrarily.

Many mills do not consider it worth while to equip for the making of shapes and plates for structural steel work, notwithstanding the fact an immense tonnage is used—some 2,000,000 tons annually.

These varying degrees of interdependence are incentives to combination and consolidation—imperative reading up the line, diminishing in strength reading down.[1]

V

Under existing competitive conditions the fabricator feels the imperative need of close alliance with some rolling mill. Unless the rolling mill owns an open-hearth furnace it knows it is not in a position to compete with mills that do. The open-hearth furnace wants its own blast furnace and the blast furnace wants its own ore supply.

Reading down any one factor may or may not have an interest in a succeeding factor—ownership is not vital, but may be profitable.

Reading up it may be a question of existence; reading down it is more a matter of profit, of "branching out" to secure business, and, as everyone knows, "branching out" is often disastrous. The blast furnace that buys an open-hearth furnace with a view to making steel in addition to

[1] Mr. Axel Sahlin, of the Millom Works, told the Iron and Steel Institute: "As for the struggling independent blast furnace, marketing a product of Bessemer iron, often through the agency of brokers, and the equally crippled maker of standard grade steel, who looks to the same intermediary and to the warrant yards for his raw material, I venture the prediction that many of these will soon be driven to the wall, unless they sensibly combine forces, each plant becoming a coöperating link in the unbroken chain of processes which turn the ore into merchantable steel."—(*Journal of the Iron and Steel Institute*, 1901, vol. i., p. 163). See "The Trust Movement in British Industry," H. W. Macrosty (p. 329).

making pig-iron may come to grief, while the purchase of a blast furnace by an open-hearth company in order to get its raw material to better advantage may be a very sound proposition, the motives are fundamentally different, results in the latter case may be quite accurately estimated and forecast, while in the former they are largely guess-work, a gamble on the question whether a company organized to make and sell pig-iron can make and sell steel successfully.

To make the point clearer, a blast furnace might very naturally buy a coal mine to get the coal and coke it needs, but there is no more reason why a coal company should buy a blast furnace than why it should buy a railroad or the business of any other large customer.

It is one thing for a given industry to buy a plant from which it must get raw material, it is a fundamentally different thing for an industry to buy a plant to which it sells its finished product. A railroad company may buy a coal mine to get the coal it burns, but a coal mine should not buy a railroad in order to sell it the coal it uses—as an economic proposition the first purchase may be entirely sound, the second is unsound; the first might lead to abuses, the second would be sure to.

VI

In response to these incentives to combine and consolidate in the vertical line—*integration*—a number of large steel companies in this country own *all* the factors from and including A to E.

While only a comparatively few large companies own all the factors from A to E a great many companies own or control two or more of the factors. The tendency in the iron and steel world—as in every other well-organized industry—is so strong for a company to protect itself by se-

curing control of the source of its raw material that few stand entirely alone.

So far as the U. S. Steel Corporation is concerned it simply does on a larger scale what other companies do on a lesser.

To carry the argument a step farther let us make another diagram:

	1.	2.	3.		
A.	MINE	—:— Same	—:— Same and so on to number in operation		
	↓				
B.	BLAST-FURNACE	—:— Same	—:—	"	"	"
	↓				
C.	OPEN-HEARTH FURNACE	—:— Same	—:—	"	"	"
	↓				
D.	ROLLING-MILL	—:— Same	—:—	"	"	"
	↓				
E.	FABRICATORS	—:— Same	—:—	"	"	"

VII

Line A would be extended to the number of mines in operation; line B to the number of blast furnaces; and so on; each horizontal line being carried out to include all the mines, furnaces, mills and fabricators in active operation.

The number varies from time to time. The sign of division is used between units on the horizontal lines because each is normally more or less antagonistic to the others; there is no necessary interdependence as in the vertical line; all combinations are more or less forced and artificial.

In schematizing any particular industry the divisions in the vertical line—the letters—are necessarily limited by the state of the art to the number of process-steps from first raw material to last finished product.

In every industry there is a stage of refinement in some last product that calls for the coöperation of the maximum number of preceding processes.

These successive steps, each calling for a highly organized industry in itself, may be four or six, or even eight or ten, but, whatever the number it is limited by the state of the art.

Whether steel is made in one country or another the processes from ore to a given finished product are substantially the same in number, and they remain the same whether one large company operates them all or whether each is operated as an independent factor.

While, therefore, a few letters suffice to mark the process steps in any given industry from nature to the last and most highly finished product, varying only with advances in the art, the numerals, representing the number of units in operation at the moment the table is compiled, vary with conditions that affect demand.

VIII

The perpendicular is the line of *normal combination,* the horizontal is the line of *normal competition.*

A mine does not compete with a blast furnace but with all other mines that are trying to sell ore to the same furnaces.

Many of these propositions may read like truisms but they are essential to the argument.

Generally speaking, combinations in the perpendicular line are natural and some inevitable, while those along the horizontal are artificial; the one is for the purpose of *controlling costs,* the other for the purpose of *controlling prices*—both may fail of their objects.

Combinations in the perpendicular line are made to en-

able the consolidation to compete to better advantage; combinations along the horizontal line are usually made for the express purpose of suppressing competition.

The public is, and for a long time has been, opposed to combinations along the horizontal line; it is beginning to see that combinations in the perpendicular line may be far more effective in restraining trade and developing monopolies.

A combination of all the furnaces in the country would have the power for a time to fix any price it pleased for pig-iron—short of cost of importation—but this power would not last long, its arbitrary exercise would prove an incentive to competition. Monopolies along the horizontal line are seldom more than partial and are always short-lived, with reactions that send prices below cost.

The monopoly that results from combination in the perpendicular line—integration—is a very different proposition, it is not due to any control of the industry, as a whole, but to the ability of the combination to kill off competitors instead of buying them, as in the other case.

IX

If a number of saw mills combine the people object because they foresee an advance in the price of lumber, but if one saw mill buys a tract of timber the people applaud the good business judgment displayed, without stopping to realize that the latter step may mean the elimination of competing mills more effectually.

"But we get our lumber cheaper," the people urge. Perhaps, perhaps not. The purchase of the timber may cut off the supply of logs to the other mills and the price of lumber may be advanced at once in the locality served. Or the mill with timber may cut prices for a time to put the others out of business then recoup all reductions.

Consolidations along horizontal lines seldom worry the independent competitor; if the consolidation advances prices he trails along making more than before; if it lowers prices to drive him out of business, in the great majority of instances he can stand the fight as long as it can—as against combinations in the same line independents usually increase in numbers and flourish, flourish by reason of their better and more economical management, by virtue of the personal element that is such a powerful factor in getting and holding trade.

As against a combination in the perpendicular line the independent is at a disadvantage.

All other things equal it matters little to a blast furnace that buys its ore whether it competes against a dozen independent furnaces or a number in consolidation—as pointed out it may profit more with the consolidation in existence, but if one furnace secures control of a mine, the position of every furnace that has no mine is seriously affected.

Why?

Simply because the combination is in a position to sell pig-iron at cost or less than cost to down competitors, and make its money from its mine.

So long as A, B, C, D, and E are independent units in the production and sale each of its own products, no one can sell at less than cost for any length of time and survive, but when all are united under one ownership the consolidation is in a position to lose money indefinitely on one or more of its units—departments—until its competitors in that horizontal line are driven to the wall, all the time more than recouping its losses in other departments.

X

The independent blast furnace has nothing to fear from a combination between mine and furnace if neither is permitted to live off the other.

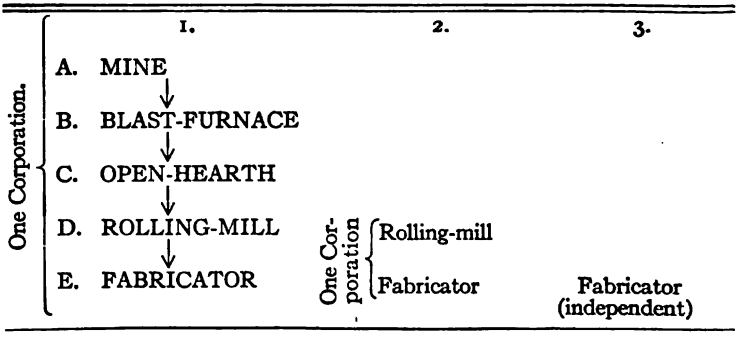
What is true of mine and furnace is true of all combinations in the vertical line—*the independent competitor stands no chance unless the operations of the consolidated units are so segregated that he can ascertain just what he is obliged to meet.*

Take the case of the independent steel fabricator. There are a great many in the country; he is to be found in every city of any size, and comparatively few have connections with rolling mills. Most of them buy the steel they use—shapes and plates—in the open market.

In bidding upon work they are obliged to figure their material at market price—say 1.10 per hundred pounds or $22 per ton, Pittsburg.

Competing with these independent companies are several companies that are owned by or allied wth rolling mills.

The following illustrates the situation:



Independent 3 is obliged to buy its steel in the open market, possibly of rolling mills 1 and 2.

Rolling mill 2 is obliged to buy its raw material in the open market, possibly from furnaces owned by 1.

It is plain the independent (3) can exist only so long as combinations 1 and 2 compel their fabricating departments to figure steel at market price in making all estimates and *to make no bids except at a fair profit.*

It is equally plain that after disposing of independent fabricator 3 the fight for control may result in combination 1 selling all the products of its mill (D), and of the fabricating department (E), at cost, while still making money in units A, B, and C, and so compel 2 to shut down.

In short, the large corporations—there are a number most efficiently organized—which own or control all the process-steps of finished steel productions, are in a position to absolutely dominate the industry; independents in any one branch live only by their sufferance.

XI

An actual instance will illustrate the point we are making.

A short time ago a contract was let for the fabricating and erection of the steel work on a large building in a western city. About 6,000 tons of structural steel was required. It was a contract worth fighting for and competition was keen.

At the time the steel was supposed to be selling at 1.10 per hundred pounds, or $22.00 per ton. On this basis a very close estimate on the completed structure was $36.00 per ton. The contract was let for under $32.50, or $3.50 per ton below cost—figured with steel at 1.10.

In discussing these figures it clearly appeared that the

company that secured the work was not in a position to do it cheaper than other competitors; on the contrary, as regards certain items of cost, it was in a position of some disadvantage.

The competition quickly narrowed down to two companies, *each backed by a mill.*

The purchaser negotiated openly with the bidders to get still lower figures, pitting one against the other.

As the figures dropped below $36.00 per ton most bidders were out of the race; they could not pay $22.00 a ton for material and get out even. It was no longer a contest between independent fabricating companies as to which could do the work the cheaper, but a competition between two rolling mills as to which was willing to sell the raw material the cheaper, and it was evident that the fabricating company which finally secured the contract must have had an understanding whereby it secured the steel at not to exceed .90, or $18.00 per ton; otherwise it will lose heavily on the building and if it pays .90 it can not hope to do better than come out even—in other words at $18.00 per ton for material the company doing the work makes little or nothing and the profit, if any, goes to the mill; there is probably no profit to either in the contract.

But whether there is or is not a profit is not material in this connection; the point here is that *the combination between mill and fabricating company* shut out absolutely the competition of independent companies; they had no chance.

So far as competition and the public and fair prices are concerned it makes little difference whether a rolling mill gives a rebate on price paid for steel or whether the railroads give a rebate on the freight on the steel, the net result is a secret and an unfair advantage to the favored company as against others.

XII

The above is not an exceptional instance; on the contrary, in the demoralized condition of all branches of the steel industry that prevailed in the latter half of 1911, the contract cited was simply one of many taken under like conditions. In their eagerness to get tonnage, the mills resorted to every device known to the old competition, and, naturally, each helped the company allied to it as against independents.

To every protest the mills replied:

"Isn't this the competition the people want? Suppose we do sell particular companies material at cost and charge others a profit, isn't that old-fashioned, cut-throat competition?"

XIII

That is old-fashioned cut-throat competition, but it is death to the independent and, in the long run, detrimental to the community, for if logically extended it means monopoly of this and that branch of the industry by the few powerful survivors.

Furthermore it must not be overlooked that between certain letters in the perpendicular line there is the big item of freight, especially important between A and B—mine and blast furnace. A combination in this line that also owns carrying facilities may save or make enough on transportation to enable it to sell all its products at competitors' cost and still make money.

The independent fabricators are caught between the upper and nether mill-stones, between the rolling mills from which they are obliged to buy and the structural steel companies owned by the mills, with which they have to compete.

A prominent lawyer connected with a large company was asked:

"Given a corporation that controls two or more units of product, has it the right to sell one unit at cost to beat its competitors in that particular line?"

"You mean—?"

"I mean, has a steel company that owns mines, furnaces, rolling mills, and—say—a fabricating company, the right to do fabricated work at less than cost to beat independent fabricators that have no connection with mills?"

"That is competition."

"Are you sure?"

"If the purchaser gets his building at less than cost, who is going to complain?"

"How about the independent that stands no show at all and is forced out of business?"

"That's his look-out; if the people want 'cut-throat' competition the company that has no mill back of it is going to get hurt."

"But does not that mean monopoly in the end by the few big companies that own both mills and fabricating companies?"

"That can't be helped. If the big company can do the work cheaper then it is bound to survive."

"But it can't do fabricated work any cheaper, not so cheaply as the independent who is well situated locally; the big company can show a profit in its structural department only by charging against that department a low price for its steel."

"What if it does?"

"That means it charges its own subsidiary company one price and charges the independents so much more they are forced out of business. The big company uses the profits it makes in other lines to get control of the structural business."

"Isn't that competition?"

"Not the sort of competition the people will tolerate when they understand."

"Ha! it is the sort of competition every merchant indulges in when he makes a run on a particular line of goods at less than cost to drive out some competitor."

"Perhaps the day of that kind of competition is passing —furthermore all that the individual does the corporation may not do."

"What is your remedy?"

"Segregate the departments of every large corporation in such a way that every competitor against any department may know exactly what he is up against."

"Segregation—that is ridiculous."

"But less disastrous than disintegration."

XIV

Let us make the point clearer.

The head of a lumber company that owns its

1. Timber
2. Saw mills
3. Planing mills
4. Lumber-yards.

insists he has the right to sell the product of any one factor at cost or less than cost if he pleases and make his profit from the other units, that his right to do so is the very foundation of competition, and if he does so and drives competitors of the particular unit out of business that is their misfortune, not his fault.

On first impression nearly everyone will agree with these notions for they not only prevail at the present time, but they have been accepted as orthodox by economists since the

days of Adam Smith, and by commercial peoples the world over so long as we have any record of commercial conduct.

This rule of commercial conduct—like many another equally "brutal"—had its origin in times and conditions when the hand of each man was raised against his brother, when trade was almost entirely a matter of gaining and pressing every advantage, of winning by fair means or foul; it was never a just rule, but so long as the contest was between individual and individual, and only the individual trader was ruined, the interest of the community was not aroused to the relentless and oppressive character of the practice.

It is the unparalleled development of organized trade and industry, the growth of what is termed "big business," which followed inevitably the use of steam and electricity, that has demonstrated the vicious nature of many ancient trade maxims.

The people *feel,* and it is beginning to be clearly perceived by many thinkers, that the large corporation cannot be permitted to do things individuals have done from time immemorial, not because what is wrong in the conduct of a corporation is right in the conduct of an individual—not at all; but because the consequences of the acts of the one are so far-reaching; the individual kills off only his neighbor in trade, the corporation kills off an army of traders.

In earlier days the influence of a very rich man or a powerful association for either good or bad did not extend far, means of communication and transportation were too slow; nowadays it is different, what a rich man or powerful company does in London is felt in New York; a merchant in St. Petersburg may upset the market in Paris; men are no longer free to do what they like because what they do affects so many more that the many protest and make their protests heard.

XV

To return to the lumber company that owns timber, mills and yards, many intelligent men will argue it has the right, moral and economic, to sell (a) timber, (b) rough lumber, or (c) finished lumber, at any price it pleases, at cost, if it pleases, for the express purpose of driving out of business a competitor in the particular line.

But not so many intelligent men will insist it has the right to use its resources to take contracts for putting up buildings at less than the cost of erection for the purpose of driving out of town all carpenter contractors and controlling that work for itself.

And still fewer intelligent men will urge that it has the right to establish a paint shop and do painting for less than cost in order to control that trade; and still fewer that it has the right to start a household furnishing store and sell household goods at less than cost to close up all other stores in the town; and still fewer that it has the right to sell groceries, clothing, automobiles, jewelry at less than cost for the purpose of controlling all those trades.

Yet one thing leads to another and no logical line of demarcation can be drawn. If the saw-mill can own its own finishing factory and make and sell below cost the interior finish of a house, there is no reason in the world why it should not sell furniture and carpets below cost.

In short the *supposed "right"* to sell anything below cost cannot be made to turn upon whether the particular article is or is not related to some other article made or handled by the same man or company.

If a steel company that owns mines, furnaces, mills, and fabricating companies can put up a steel building at less than the cost of fabrication to control the fabricating industry, it can build brick or wooden buildings at less than cost, it

can make and sell flour at less than cost—in short it can use its resources and the profits it makes in certain departments to demoralize as many different businesses and ruin as many different competitors as it pleases.

XVI

Let us bring the matter home to the individual.

A man owns a tract of land, he is lucky enough to strike oil, over night he becomes a millionaire many times over, he feels an ambition to be the biggest man in the adjoining town, he starts out to control every enterprise in the town—the bank, the saw-mill, the lumber-yard, the coal-yard, the woolen mill, and the principal stores.

There are plenty of towns where things like this have happened.

Some of the owners have no desire to go out of business, they will not sell. He uses the money he is making from his oil-field to start rival establishments and he sells at cost and less than cost until he either ruins his competition or compels them to accept his terms.

For the present he has the *legal,* but has he the *moral* or *economic* right to do this?

Your answer to that question will depend upon whether you have any philosophy of trade beyond stereotyped traditions and superficial current notions—whether you *think* or only *think you think.*

There is a *feeling* that this sort of competition is *not right,* the sentiment against it is growing in spite of arguments to the contrary, in spite of traditions, in spite of all the theories of the economists of the last century.

The reason why this sentiment is growing, why convictions are changing, is because within the last twenty years

combinations have exercised those supposed rights *ruthlessly* to compel competitors to sell out or go out of business.

If a coterie of men wished to buy up a number of plants and form a combination, or if a large corporation wished to buy up certain smaller competitors the mode of procedure was first to make an offer, then if the offer was not accepted, start a ruinous competition by selling at cost and less than cost until the weaker company was forced to beg for terms.

So many thousands of men and hundreds of towns and localities have been disastrously affected by just this "competition" that it is not surprising the feeling against it is strong.

XVII

Many remedies have been proposed for the trust problem—federal incorporation, federal supervision, federal regulation of prices and profits, dissolution, but after years of close association with competitors of the trusts, who are also large buyers from them, the writer has never heard any very loud demand for most of these remedies.

Dissolution—no one who has any knowledge of industry wants that. Federal regulation of prices and profits is dismissed as chimerical. Federal incorporation or supervision—yes, if you please, but then what?

What is to be the practical result of any step proposed?

That is the question put to every theorist on the subject.

The man who has his fortune, his business, his livelihood at stake wants a practical answer, he wants to know how the proposed remedy will affect him.

Again and again the writer has heard from independents who are fighting for existence against the trust the one cry: "We don't care how big the trust is or how many departments it operates in competition with us. We can

take care of ourselves. On an even footing we can always get business away from it. All we ask is fair play."

The one way to get fair play is to insist no company shall do business in competition *at a loss.* Compel every integrated company to show up the operations of each department in such a manner there will be no chance for unfair competition, and if it appears it is selling its own departments material at less than it charges buyers, compel it to rebate to every customer the excess—or three times the excess by way of punishment.

Those demands if carried out would mean a vast and beneficial extension of the open price policy and a solution of the trust problem with a minimum of interference with individual initiative and freedom.

The machinery required would be simple as compared with some of the elaborate schemes now before Congress. The precise steps to be taken are discussed in the last chapter.

CHAPTER XVIII

THE LABOR PROBLEM—INTEGRATION VS. AGGREGATION

I

For the labor spent and capital invested, no two enterprises yield the same returns. That being true, it would seem to follow that in no two enterprises should the share received by labor—*wages,*—and the share received by the owner—*profits*—be the same—*unless* labor prefers to accept a fixed and uniform wage and relinquish all claim to an interest in the business it has helped establish.

But labor is not willing to do that. As has been shown, the trend of modern thought and recent legislation is toward the assertion and recognition of labor's claim to an equitable interest in the industry.

The only consistent theory of workmen's compensation and pension laws is that the industry—*not the employer*—owes the laborer something.

The only logical theory at the basis of the strike and fight against "scabs" is that employees have certain rights to secure which they may not only strike but prevent others from taking their places.

The labor movement is based upon the fundamental notion that labor has a proprietary interest in whatever it helps create, and while this interest is not explicitly recognized by employers, it is implicitly admitted in the settlements of most labor controversies.

Furthermore, it is quite apparent that unless labor does act upon this theory it is in no position to protest if "locked out," or if employers discharge high-priced help and substitute low-priced. If labor has no interest it has no voice.

II

But if it has an interest, what then?

The question is crucial, for the answer is fraught with consequences.

If the men employed in a particular factory have an interest therein, their share of the returns from the business should vary with the prosperity of the business.

They may be guaranteed—as many salesmen are—a minimum salary or wage, but over and above this minimum they should take some chances on fluctuations in the returns.

As a matter of fact, they do take those chances now; when business is dull, their wages are reduced or they are worked half time; if the business fails, their losses may be greater than the owner's, they may lose all they have saved. In truth, no class in the community assumes the risks labor assumes, since it stakes its all on every venture.

To a certain extent the interest of the employee is being recognized in profit-sharing arrangements, and he takes his profits and his losses *pro rata* with owners, but, generally speaking, labor occupies this inconsistent position:

It claims an interest in the enterprises for which it works, denying to the employer absolute control, but refuses to take the chances incidental to such interest.

It not only refuses to take any chances, but it demands a flat rate of compensation far above a minimum wage, a rate of compensation that may have no relation whatsoever

to the particular industry, but one that is often based upon returns in other and wholly unrelated enterprises.

III

In the labor world wage scales are fixed by conferences and councils of men who make no pretense to investigate the ability of an individual enterprise to pay the rate.

Whether an employer is making money or not, he must pay the union scale. A railroad may be in the hands of a receiver; it matters not, it must meet the demands of the unions or they will order strikes.

Labor as now organized cannot do otherwise; it cannot advance wages on A and lower them to B; it cannot fix the wages of firemen on the New York Central lines at so much and a lower scale on the Pennsylvania, the Erie, the Wabash, although the earnings of these roads and the work on each differ so much that men may prefer to work on one for less than they get from another.

Unions are in a difficult and *ultimately untenable* position; they are obliged to treat with employers *on the theory they have labor to sell,* not on the theory that each employee has an interest in the business.

Collective bargaining is the only form of contract feasible; the unions cannot deal with individuals; they must lay down rules and make wage scales for classes; if they attempt to do otherwise the fabric of unionism as now built up falls to the ground.

The attitude of employers is quite as inconsistent. They deny their employees have any interest—much less any voice—in the business, and in the same breath refuse to meet and treat with the heads of employees' unions.

If labor is a commodity, like coal, to be bought by each employer as cheaply as he can, employees not only have

the right to, but should organize to get the best wages they can; their union leader is their representative to make a bargain.

The employer who refuses to treat with a union and at the same time denies any interest in the business to his employees has impaled himself on both horns of the dilemma.

But the employer who recognizes the broad economic proposition that all who work to build up a business have an interest therein, not only is in a position to, but necessarily *must* say to all outsiders, "You cannot interfere between this business and the men who are working to make it a success and say what any man or set of men shall receive, because you do not know anything about the business or the profits we may make this year."

Under such circumstances the men themselves would be the first to resent any attempt by outsiders—especially outsiders in the employ of competitors—to say they must take a fixed sum per day in lieu of a share in the profits at the end of the year.

Employers deny the interest of employees in the business, but as against unions act as if the employees had such an interest.

Unions assert the interest of employees in the business, but as against employers act as if employees had no such interest.

The trouble lies in an imperfect recognition on both sides of a fundamentally sound theory of labor organization, a theory based upon the economic proposition that all who help to build up and maintain a business have an interest therein.

If that proposition is sound, organization of labor must be on lines radically different from existing.

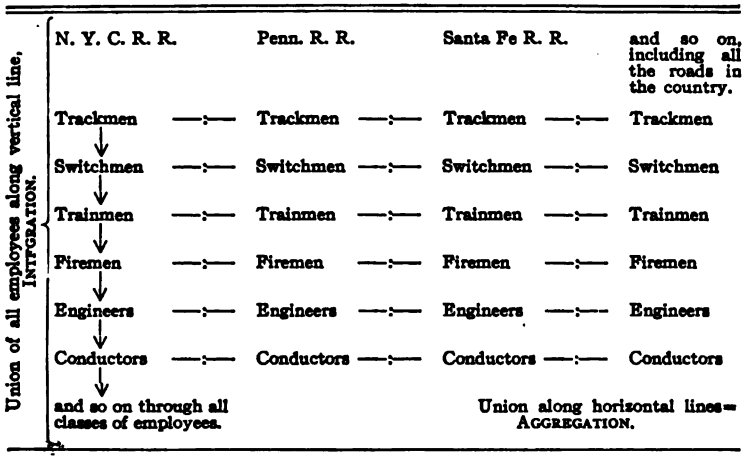
For purpose of illustration we give here the labor scheme of a given industry. To include all classes of em-

ployees would make the scheme needlessly complicated for the purposes of the argument.

The same scheme in outline applies to any enterprise.

IV

RAILWAY EMPLOYEES[1]



It is plain at a glance that two fundamentally different modes of combination are possible:

Combination in the vertical line—*integration.*

Combination in the horizontal line—*aggregation.*

The lines of cleavage depend upon the lines of organization.

All labor unions are organized along horizontal lines, each is an *aggregate* of individuals who follow the same occupation, and their power depends upon *numbers*—the underlying theory is *combative,* not *coöperative.* The lines of cleavage are horizontal, *destructive to coöperation and harmony within the industry.*

[1] Compare this with scheme of industrial coöperation on page 264.

The firemen of all the railroads in the country are banded together, and the engineers of all the roads are in a brotherhood, but the fireman and the engineer who ride in the same cab are not united; in fact, their unions are necessarily more or less antagonistic; one may support the other in a demand for higher wages and a threat to strike, but only as a matter of policy.

Ask a brakeman or a switchman what he thinks of the demand of the engineers for increased pay,[1] and he will give you his opinion in language hardly fit for publication, but his union will keep silent, because it expects to put in its own demand later on, when, in turn, the engineers will be expected to lend their support.

It is needless to say a fireman on a road in California has nothing in common with a fireman on a road in Maine; the work is not the same, the fuel is not the same, the cost of living is not the same, yet the two are linked together each as against not only the company that employs him, but against the engineer and conductor who run the train on which he fires. His wages and conditions of employment are fixed by men he never sees, who live in States thousands of miles from where he lives; he works when they tell him to, strikes when they tell him to, and accordingly as he is told he will or will not take his engineer's place if the latter strikes for better wages.

V

The condition is fundamentally unsound, and the stronger the unions become the more clearly do they demonstrate the *weakness of the theory of combination by aggregation.*

Just as was found in discussing industrial combina-

[1] Formulated, April, 1912.

tions,[1] it is *integration* in the vertical line that is normal and powerful to the extent of even being a menace to non-integrated units. To-day labor unions spread over the country like so many thin strata of slate, the larger they are the greater the danger of breakage; the lines of cleavage are so well marked that many "shrewd" employers have little trouble in exciting dissensions that split for a time the superimposed layers, and array union against union.

Integration is granite in texture; it is the fusing of each industrial and commercial unit into one homogeneous whole.

Integration starts normally *from within;* aggregation starts usually *from without.* The outsider, the professional agitator, has no interest in integrating a plant or a factory, in welding all its employees, from day laborer to owner, together in one harmonious body—that sort of a union makes no place for him.

The outsider finds his opportunity and profitable employment in associations along horizontal lines, in huge aggregates, each with its corps of officials.

Per contra, the insider, the man who has something at stake in the success of a given plant, has no interest in uniting with workmen employed in a competing plant; that is folly.

As things now are, with labor organized in large aggregates on horizontal lines, a union of plumbers, steamfitters, plasterers, carpenters, engineers—of any given trade—formulates its demands for increased wages; these demands have no relation whatever to the special work or the needs of the employees of a particular contractor or company, nor do they take into consideration the ability of a particular employer to meet the demands.

If the demands are not complied with, strikes are called,

[1] See page 263.

not so much for the purpose of coercing employers directly, as for the purpose of so inconveniencing the entire community that the public will compel employers to yield, or arbitrate, which up to the present time has been but another manner of yielding.

These methods are crude and primitive, and will surely give place to ways that are rational and scientific. The strike has no place in a civilized community, neither has the lockout—they are the weapons of brute man.

But so long as labor organizes in aggregates the chief strength of which is brute force, the strike and the lockout will be with us, and in more and more violent forms, with the inevitable result that employers and employees will get farther and farther apart, feeling between the two will become more and more bitter; even now the friendliness, the cordiality that should exist are gone, and gone long ago.

The employee acknowledges no loyalty except to his union; the employer acknowledges no interest in his workmen other than that of a purchaser of labor at fixed rates, and no obligation to them other than the law imposes.

While *integration* of labor is the *natural development* of organization, and *aggregation* the *artificial,* conditions have been such that employees have been compelled to organize along the arbitrary and artificial.

Employers have so stubbornly refused to admit their workmen to any voice, much less interest, in the business, that they could not organize within; employers have been so short-sighted they have systematically discouraged that sort of organization. Hence the opportunity of the outsider, the professional agitator.

But employers are becoming a little wiser, and the men are beginning to see that those employed in one factory in one State have no very vital interest in striking to support the demands of men employed in a competing factory in an

adjoining State; they are beginning to see that the real interest of each body is in making their own factory so prosperous it can afford to pay more to all connected with it.

VI

Under existing conditions all negotiations are conducted between employers on one side and employees on the other in a spirit of sharp antagonism. Every controversy over wages is preceded by preposterous claims and statements, and by charges and counter-charges of the bitterest nature. Nothing is left undone and unsaid to inflame both sides.

Every spring the situation becomes very acute in the building trades in large cities, in coal-mining districts, and between railroads and their employees.

The public that bears the cost tamely submits to the following programme:

Demands by employees.
Refusals by employers.
Strikes with violence.
Arbitration and adjustment.
Advance in wages.
Advance in prices far more than sufficient to cover the higher wages.
Peace for a few months.
Repeat.

For weeks and months the papers are filled with accounts of rioting, slugging, and shooting, entire communities are terrorized, men, women, and children are wounded and killed. Meetings are held at which agitators and anarchists breathe hatred and defiance toward capitalists, toward the government, toward society itself.

Is it conceivable that after such experiences the men, no matter if all their demands are conceded, can return to work with the loyal devotion they should have to the industry and property in which they are far more interested than distant stockholders and upon which they depend for a livelihood?

Every observer knows that only the most intelligent are able to overcome the feeling of hatred so systematically engendered, many of the more ignorant actually take delight in injuring and destroying tools and property in a spirit of "getting even" for real or fancied wrongs.

VII

At this moment the country is trembling on the brink of a great railroad strike.

On April 22 the following letter was sent the chief of the Brotherhood of Locomotive Engineers, which has a membership of over 70,000.

"DEAR SIR: We understand that negotiations between the Brotherhood of Locomotive Engineers and the managers' committee of the eastern railroads have been definitely broken off, and that the engineers are likely to withdraw forthwith from the service.

"If this is unfortunately the fact it is evident that a grave situation has arisen which threatens most serious consequences to the public. In this emergency we are impelled by the sense of duty to tender our friendly offices to the contending parties, in the hope that some means may be found to adjust the matters in dispute without the calamity of a general strike.

"We are sending an identical letter to Mr. J. C. Stuart, chairman of the committee of railroad managers."

MARTIN A. KNAPP,
Presiding Judge, U. S. Commerce Court.
CHARLES P. NEILL,
U. S. Commissioner of Labor.

VIII

"The mediation of federal officials came immediately after the refusal of the managers of fifty railroads concerned to concede the engineers' demands for an 18 per cent. increase in wages, when Chief Warren S. Stone, of the Brotherhood of Locomotive Engineers, had announced that in view of this refusal a strike of engineers would go into effect within thirty-six hours."

"Although Chief Stone had a few minutes before declared that his fifty associates on the engineers' committee would proceed to-night to their headquarters to prepare for a strike within thirty-six hours, he was impressed with the letter to the extent that he amended the order, declaring the committee would remain intact here to-night to consider the situation.

"He said: 'No organization is so strong it can fail to hearken to an appeal from representatives of the federal government,' and declared he would place the proposition before the engineers' committee with the recommendation that it be accepted."

"Officials of the local Chicago division of the Brotherhood of Locomotive Engineers last night said all traffic, including passenger, freight, and yard, within the strike zone, would be stopped simultaneously.

" 'The men are "sore" because of the inequality of wages,' he said. 'Some of the lines in the east run side by side for miles. The engineers of one line will be receiving 4 cents a mile and those of the other line 4½ cents a mile.' " [1]

In threatening to "tie up" 52 per cent. of the railway traffic of the country unless their demands are complied with, the union of engineers is acting in open defiance of the Sherman law.

Imagine what would occur if railroad companies combined and threatened to stop all traffic unless wages were reduced or freight rates advanced—the rage of the pub-

[1] From the daily press.

lic, the super-rage of the press—it is all quite unthinkable.

Why should the public submit without protest to the threat of the engineers to stop every train in the country unless their wages are advanced?

The public has only an indirect and a comparatively small interest in the increase of wages demanded, even if it should lead to a slight increase in rates.

But the public has a direct and very great interest in the threat to *stop traffic for any cause,* and

If social progress is not a sham and a delusion, the time will come speedily when the representatives of the public will not *beg as a favor* that traffic be not stopped, but will *command sharply and peremptorily* that traffic go on without interruption, and that controversies between individuals and classes of individuals be adjusted without inconvenience to the public at large.

That several thousand men in combination should threaten to stop the commerce of ninety millions and have the power to do so, is a proposition so grotesque it does not seem possible a civilized people at the beginning of the twentieth century would tolerate it—yet it is not only tolerated but meekly accepted as a condition to be dealt with as gingerly as a small boy handles a giant cracker.

IX

The engineers have scarcely finished presenting their claims when the firemen, through their national organization, begin formulating theirs, and so it goes, an endless round, *as a rule no two unions of national importance formulating demands at the same time.*[1]

[1] Seven men of national reputation, composing the Arbitration Commission which is to decide if the fifty-two railroads in the Eastern section of the country shall increase the pay of the engine drivers, will meet to-morrow morning at the Oriental Hotel, Manhattan Beach.

Each union enlists the sympathy of the public by making it appear that its fight is with the companies, whereas it is a self-evident proposition that *every increase in the cost of operation is borne in the end by the public.*

The unions are even cynical; when the great anthracite coal strike was settled a few years ago by giving the men an advance of so much per ton, it was done with the understanding the companies should profit by the agitation by advancing the price of coal far more than the added cost per ton. It was a matter of sober and serious discussion how much both sides could get out of that patient beast—the public—before it would kick. This spring the controversy is renewed with like results. [1]

But the public is becoming restive; it is beginning to see that however ardently it takes side with this union and that, somehow it comes out a loser in two ways—it suffers most of the inconveniences and losses of strikes, and in the end pays in higher prices more than all advances in wages.

The public is not only beginning to see these things, but it is beginning to inquire if something may not be done to put an end to these periodical "conflicts between capital and labor"—as the phrase goes.

There is but one way to bring about peace and harmony and that is to promote the *integration of each industry from top to bottom.*

On their decision depends whether the railroad workers shall divide among themselves annually an additional $7,500,000. It also will be a signal to other labor organizations whether they shall move for more pay. Already the *railway firemen* have made demands for increases which would amount to $20,000,000 annually.—*N. Y. Herald,* July 14.

[1] Circulars sent out by the great coal operators to-day will bear the glad tidings to the general consumer that the price of domestic anthracite coal has been advanced 25 cents a ton; and as a result the general public may have the satisfaction of knowing that it, and not the operators, will pay the nominal increase of 10 per cent. recently granted to the striking miners—that and a little more. The little more amounts to about $6,000,000 this year.—From *N. Y. Times,* May 24th, 1912.

To return to the controversy now on between the fifty odd railroads and the engineers, the following suggestions are offered with the firm conviction they would tend to a clearing up of the present unsatisfactory conditions that exist between the roads and their employees and ultimately lead to an integration of the latter.

When any class of employees, high or low, organized or not organized, asks an advance in wages, the demand affects (*a*) the company, (*b*) all other employees, inasmuch as an advance to one class may, usually does, mean a diminution of the fund available for advances, (*c*) shippers and all patrons of the road since every increase in cost of operation may mean either an increase in rates or a bar to reduction in rates, (*d*) the public, since every increase in cost of operation means a reduction of the fund available for betterment of service.

All these classes are so intimately concerned in every proposition that means an advance in the cost of operation they should be consulted *at the outset* whenever such a project is under consideration. As it is, only (*a*) the company takes any interest in a demand for increased wages until a strike is threatened.

Shippers sit back unconcerned until the roads propose to advance rates, then they are aroused, but too late as they will ultimately find, for the time to act is when things are being done with the approval of the public and representatives of the government that must sooner or later lead to either advances in rates or such curtailment of operations, improvements and extensions, as will place shippers at a serious disadvantage.

X

The interest of all classes concerned, employees, patrons, the public, can be aroused in this way:

1. When any one class of employees asks for higher wages[1] let each company address a formal request to *all* classes, *whether organized or not,* to formulate their demands, if they have any, and present them by a date named.

2. Decline to pass upon the demands of any one class until all have filed theirs or announced they have none to present.

3. When the demands of all are in, tabulate and ascertain the total—the gross amount that would be added to cost of operation.

4. Call an open meeting at which all classes interested shall be represented: (a) the company which is to disburse the amount; (b) employees, both those who demand a share of the amount and those who have filed no claims but whose future opportunities to get advances will be affected by the allowance; (c) shippers and patrons who really pay the amount; (d) the public through some body such as the Department of Commerce and Labor or the Interstate Commerce Commission, or a commission yet to be established, and the press.

5. Lay before the meeting first of all the total amount of the demands made and ask the representatives of employees the one question, "Can the road, in your opinion, stand the increased cost of operation represented by this total without advancing rates?"

No question of the distribution of the total amount demanded should be permitted to arise. The total may be so absurdly large that it is apparent to everyone it must be scaled down fifty, seventy-five, ninety per cent. before it is even debatable, and each class may show a disposition to reproach the others for having put in demands that are

[1] The suggestions apply whether the demand is for higher wages, shorter hours, or any other change in conditions of employment that means increased cost of operation.

ridiculous, but that is a matter for the men to settle among themselves.

The company, shippers and the public have the right to insist employees as a body shall not present demands the footings of which make an amount so absurdly high that the employees themselves concede it must be scaled down.

6. If the employees concede that the aggregate of their demands is in excess of anything the road could possibly afford, it will be for them to retire and scale their demands to a total they think the road can pay.

7. On the presentation of the revised demand it will then be for the company to say whether it can and is willing to add the sum demanded to its pay-roll, thereby increasing the cost of operation.

The decision must have the approval of (*c*) shippers, and (*d*) the public, inasmuch as both are affected.

8. If the road with the approval of all parties interested says it will appropriate for wages the additional sum demanded, the employees—all classes—must then retire and distribute this additional amount among themselves as they see fit, settling all their differences among themselves without involving the management of the road, shippers, or the public, in any controversy. When they have made the distribution the company will accept the schedule and pay accordingly.

9. If, however, the road reaches the conclusion it cannot pay the amount demanded without increasing rates, a question for arbitration will result, namely: "What amount, if any, can the road pay in increased wages without increasing rates?"

In this arbitration all parties interested must be heard. Once ascertained, the amount will be distributed by the employees according to paragraph 8.

10. If the employees decline to arbitrate the question "What amount, if any, the road can pay without increas-

ing rates," but insist upon the justness of their claim, even if rates must be advanced, the question for arbitration then is two-fold in character, "What amount are the employees entitled to irrespective of any increase in rates?" and, the amount ascertained, "What increase of rates must be allowed to cover the added cost?"

The statement of the question involves the assumption that, all things considered, rates may be lower than they should be, so low, in fact, they do not cover proper cost of operation and maintenance.

It is obvious that this question raises an issue between shippers and the public on one side and employees on the other.

XI

So far so good, but it is plain there is another element involved in all these hypothetical cases and especially in the question last suggested for arbitration, namely, the question of *profits to stockholders.*

The employees may insist that the question to be submitted for arbitration is *threefold* in character; first, what advance are they entitled to irrespective of rates and dividends; second, to what extent, if any, must rates be advanced to pay the amount; third, to what extent, if any, must dividends be reduced to pay the amount.

The adjustment of that question, and that is the broad, the fundamental question, presented in every wage and rate controversy, *ultimately* involves a valuation of the roads, an ascertainment of their fair capitalization, and the allowance of such interest and dividend charges as are necessary to secure capital for improvement and extensions, a fair allowance being made to stockholders for risks assumed, since they, in the first instance, assume all the hazards; their dividends fluctuate from year to year, and often

disappear entirely long before the prevailing rate of wages is reduced or rates advanced.

As things now are both wage controversies with employees and rate controversies with shippers are settled in the dark.

This class or that class of employees demand and finally get increases in wages regardless of the fair claims of other employees and regardless whether the stockholders of some of the roads affected have ever received any dividends.

Likewise the Interstate Commerce Commission settles rate controversies for all the roads in vast sections of the country with no accurate data regarding the actual investment in any one of the roads and, consequently, with no information whatsoever whether the stockholders of any particular road are justly entitled to the benefits of the rates demanded.

All questions regarding both rates and wages are now adjusted from year to year in haphazard fashion, with no attempt to reach a scientific basis that will attain lasting results.

XII

What would be some of the consequences of the course suggested?

Take the demand of the engineers; the fifty odd roads affected could not pursue a wiser and fairer policy than the one outlined in the ten numbered suggestions.

The demand made by the engineers involves a large amount, estimated at $7,500,000, added to the cost of operation.

That additional amount could not be paid without absorbing—certainly with many of the roads—a large portion, possibly the entire amount available for making in-

creases in the wages of other classes of employees, hence *all classes* have a right to be heard before any award is made.

There is the further possibility that the amount asked by the engineers could not be given without crippling some or all of the roads, unless they are permitted to advance rates, hence shippers and patrons are interested.

And there is, of course, the possibility that to add the amount asked to cost of operation would, if rates are not advanced, affect improvements and extensions, hence the public is keenly interested.

In any event and under all circumstances every dollar paid out by a railroad comes out of the public directly or indirectly.

A demand for increased wages is as much a demand upon the public as a demand for increased rates—*except* where increased wages or shorter hours mean such increased efficiency of service as to counterbalance the cost—that would be one of the questions for arbitrators to consider.

But when the engineers of one road who are each making two hundred or two hundred and fifty dollars a month demand 4½ cents a mile *simply because the engineers of another road get that amount,* no question of increased efficiency is involved.

XIII

The roads involved have proceeded to arbitrate the engineers' demand with the certainty that no sooner is that arbitration over than another union will present its claims, and another, and another, and so on in endless chain.

The agitation is constant, systematic, and shrewd; the unions "play the game" incomparably better than the roads; the latter are timid, the former daring; the roads are

afraid of public opinion, of the press, of adverse legislation—of their own shadows—partly because their shadows have been rather black in the past.

If in the present emergency[1] the roads should adopt the course outlined, the Brotherhood of Engineers would hardly be in a position to object to the invitation to all other classes of employees to present their claims, since the move would seem to be a big step in the direction of the federation of labor, the dream of the ardent unionist and the nightmare of the average railroad official.

But the ultimate result would be the partial disintegration of labor unions along present artificial lines and *integration in the normal vertical line.*

Public opinion would certainly support the roads in the fair and reasonable requirement that all employees who intend to make demands shall do so at the same time so that the sum total may be known by roads, shippers and the public generally, and so that whatever amount is finally allowed by arbitration or by some tribunal shall be equitably distributed among all employees entitled to increases, and not absorbed by some one or two classes to the exclusion of others.

Public opinion would also support the proposition that if the amounts demanded foot up to an absurd total, the employees themselves, without troubling either the companies or the public, should scale down their demands until the total is a figure they themselves seriously contend the roads should pay.

Again, public opinion would certainly support the proposition that after a gross amount has been awarded, the employees should distribute this amount among themselves without troubling the roads or the public; but if the proposed distribution is unfair to a class or an individual, ar-

[1] Referring to the controversy with the engineers which will probably be settled by the time this book appears—settled only for the time being.

bitration would be necessary; the humblest employee must have an opportunity to have his claims heard and considered.

XIV

It begins to be plain that certain results would quickly follow the adoption of the plan outlined.

The requirement that all classes of employees—organized and unorganized—of each road present their claims by a date named would tend to bring the employees of each road in closer contact with one another—national organizations could not formulate demands that would fairly adjust wages to conditions and earnings of particular lines.

The presentation, for instance, to a board of arbitrators of the demand for a gross sum involves first the allowance of a sum in gross against all the roads, then its apportionment among the roads.

A moment's consideration shows that the one question involves the other, for while it would seem comparatively easy to award a sum in gross based upon the gross earnings of all the roads involved, it is not easy when that sum is apportioned, for some roads might not be able to increase their operating cost by the amount fixed, while others would scarcely feel the added expense.

No arbitration, award and apportionment of the gross amount demanded would be fair that did not take into consideration the condition of each road.

A road traverses a new and sparsely settled section in the far west; its cost of construction, maintenance and operation is an exceedingly large percentage of the gross receipts as compared with an older road in thickly-settled sections; its stockholders may get nothing for years; manifestly it would be wrong to add a large item to the cost of operating such a road in, say, Oregon, simply because

the engineers of the Pennsylvania Company demand more pay; just as illogical as it would be to arbitrarily increase the pay of clerks in a dry-goods store in Seattle because the clerks in a similar but larger store in New York are given an advance; just as illogical as it would be to increase the pay of deck-hands on Puget Sound simply because deck-hands in Boston harbor get an increase—and so on.

What a given industry can pay depends upon what *it earns,* not upon what *some other* industry *pays.* There are statistical averages and levels of wages, rents, interests, taxes, etc., etc., and every man in business should study these averages and provide accordingly; he cannot hope to get his labor at lower than the prevailing rates in his locality any more than he can hope to get his insurance below prevailing rates; but whether he can stand a sudden increase of either wages or insurance or of any other item of cost, depends not upon what some other man is making in another street or city, but upon what he himself is making in his own business.

XV

Assuming, however, that each company knows exactly the gross sum that must be added to its pay-rolls, it is now for the employees of that road to distribute this amount among themselves.

The distribution cannot be made by a national conference, or by labor leaders sitting a thousand miles away; it must be made by the men interested. On one road the firemen may be entitled to a ten per cent. advance out of the fund as against two per cent. for the engineers; on another conditions may be reversed, or the brakemen may be entitled to ten per cent. as against but one per cent. for

engineers and firemen—and so on, all depending upon conditions of service.

The result would be a strong tendency toward integration of employees of each road and a loosening of the artificial ties that now bind men working for one employer to all of a similar class working for competitors.

Under existing conditions labor unions recognize the justice of virtually all that has been said by making *different demands* for *different sections* of the country. They do not treat with all roads at a time, but concede that conditions east and west, north and south, are different; what one section of the country can afford to do another cannot.

In all their agitations for better wages the unions concede that what employers in one city can pay those in another cannot. They also concede that what one industry can pay is no criterion of what another industry can pay.

Carried to their logical conclusions these concessions mean that in all fairness demands made upon a given railroad should be based upon that particular road's ability to meet the demands and not upon conditions over which the road has no control, such as the earnings of some older and more profitable company.

XVI

National organizations would by no means disappear, but they would change radically in character.

The *integration* of employees with their industry is one thing; the *coöperative association* of employees and industries is quite another thing. The one is the intimate union of all interested in a given enterprise to make it a success; the other is the friendly association of all related industries and all related occupations in national organiza-

tions the prime object of which is the introduction of higher standards and sounder principles in business generally.

Each railroad should be completely integrated so that it is an efficient and harmonious economic unit. At the same time all the railroads of the country should be in one great national association, in which employees, shippers, and the public through some federal administrative body would be represented.

Each class would have its own association, in a spirit, not of antagonism, but of coöperation.

Associations of employees and shippers should have their headquarters and meeting places in the same building with the general association, and it should be a fundamental rule that every meeting of any class is open to all other classes. The result would be that while each road and all interested would be influenced in the consideration of any proposition, primarily, by conditions affecting that road, they would also weigh the effect of their actions upon all other roads and all parties interested in the same.

Lines of cleavage which are so sharply and bitterly accentuated now would fade and finally disappear.

XVII

Unless there is *integration* the outlook is gloomy, indeed. As things now are the chasm between employer and employee is widening and deepening; class feeling is becoming more and more bitter. The stronger the unions the greater the necessity for employers to get together to resist demands that frequently have no other basis than the determination to make demands persistently and systematically.

The time is ripe for a rational and scientific investiga-

tion of the entire subject, for the ascertainment of underlying principles and the formulation of fundamental propositions and rules of conduct that may be given, if necessary, the sanction of law.

The strike must go.

The lock-out must go.

Neither has any place in the civilization of the twentieth century.

True, the courts have said repeatedly, "Employees have the *right* to strike," "Employers have the *right* to discharge=lock-out."

Legally, yes; morally, economically, *no.*

We must not permit our notions of right and wrong to become confused by what courts say men have the *legal right* to do; what is legal may not be right, and what is right may not be legal.

Strictly speaking a man has no more *right* to throw down his tools and quit work at a moment that will cause some one else loss and trouble, than has an employer the *right* to "fire" a man at a time and under conditions that will cause him loss and trouble.

When we talk of *rights* to do these things we are not in the domain of rights at all but in that of *law*—of *legally punishable acts,* and every man knows that what is legally wrong to-day may be made legally right to-morrow by act of a legislature, or by a supreme court reversing its own decision, and every one also knows that what is *legally* right in one state or country may be legally wrong in another owing to differences in laws or decisions—and so on in endless confusion.

But what is *really right* does not depend upon legislatures or courts but upon conscientious and intelligent conviction, and it is not too much to say that for a body of men to strike for the express purpose of causing ruin and disaster, cold and starvation to the entire community

is contrary to conscientious and intelligent conviction and therefore *wrong;* they have no more *right* to do it than they have to organize a mob and destroy homes.

Courts may be powerless, may feel compelled to hold men have the *legal right* to *strike* and *paralyze* industry and commerce, but in their reasoning they should carefully distinguish between a legal right, which is a very human and uncertain proposition, and the purer, higher, more abstract theory of right which, law or no law, must finally guide men in all their actions and relations.

XIX

CLASS LEGISLATION AND DISCRIMINATION

I

We come now to the most discreditable and, take it all in all, the most *disheartening* chapter in American history; discreditable because the facts it relates are so *opposed to all our ideals of freedom and equality;* disheartening because the tendencies disclosed lead straight toward the arraying of *class against class* in bitter conflict, and the *dissolution of democratic institutions.*

Not that this country will proceed to such extremes and be wrecked on the rocks that have wrecked every attempt heretofore made toward popular government—let us hope we have too much good sense to run blindly into disaster, but that is the way we are heading at the moment, and no impartial observer doubts it.

The anarchist, the communist, the radical socialist, observe the trend of events with undisguised satisfaction, they say, "We are nearing the crisis," and stand ready with torch and bomb.

The average American looks upon Russia as the hotbed of anarchy and revolution, yet there is probably far more dynamite systematically used in the United States than in Russia for the destruction of life and property in conflicts between classes; and certainly far more than is used in any other two civilized countries taken together.

Three presidents slain in forty years is a record no

other country can show. True, two of these assassinations were by men of more than doubtful sanity, but the same can be said of European crimes of similar character.

The point is that in the sane or insane use of dynamite and murderous weapons as part of social or political propaganda this country is nowise behind the most despotic of European governments.

We think Russia is on the verge of a tremendous social upheaval; we may be quite as near one ourselves.

We look with pitying eye upon the disorders in France and gloomily predict the Republic will not last long; whereas the truth is, that all the disorders reported would add scarce a ripple to the rioting that takes place periodically in our one state of Pennsylvania, to say nothing of the highly inflammable conditions that prevail in Colorado and those western states where the Industrial Workers of the World are strong.

In all probability our strength lies in our very indifference to what is going on about us. We do not take the use of dynamite and the killing of presidents very seriously; our attitude is one of regret that misguided men should do such things, but they mean to us nothing in particular, there is no wider significance, no warning; we think the country is too sound and sane to be carried off its feet.

Let us hope that is so; at the same time things are going on that are more significant than the explosion of a bomb or the killing of a president.

Class legislation, laws drawn for the avowed purpose of conferring upon certain favored classes privileges denied others;

That is the real menace to our institutions, for that more than anything else encourages the bomb thrower, the rioter, the assassin, lending a certain logical coherence to their disordered ideas, for if the law deals with certain classes as enemies of society why may not they?

II

Equality of all men before the law has been the boast of American civilization from the foundation of the government.

It has ever been an idle boast so far as negroes and Indians are concerned, sinks to a whisper as regards Chinese and Japanese, rings a little hollow when women are considered—but, then, they are not "all men."

Still it is the fundamental *theory* of our civilization that all men are, *certainly should be, equal before the law*—that is the ideal toward which we are supposed to be working—are we?

The answer to that question is found in the speeches of our public men, in laws proposed and laws passed, and it is that,

At no period in the history of the world has there been a more servile catering to classes who have votes.

III

This is a broad, a startling assertion, but it is borne out by facts; that the truth is not more clearly realized is due partly to our extraordinary composure and partly to our peculiar political divisions. In most countries one central legislative body speaks for the nation; what it does the world notes and criticizes; the result is a strong counter-balance in the influence of public opinion within and without the nation, and that means greater deliberation. In this country there are forty-eight almost sovereign states, each with complete legislative machinery, passing in the twilight of semi-publicity such laws as it sees fit. In addition there

is the federal government with Congress turning out its quota of statutes.

These forty-nine legislative bodies give the demagogue his golden opportunity; he experiments at his leisure and almost without observation. Even if the American people were not over-absorbed in making money, it would be impossible for them to watch all their legislatures, as it is they pay so little attention that any class with ordinary persistence can get somewhere almost any law it desires.

So true is this that the courts are kept busy weeding out the laws that are so rank, so unfair, so one-sided they are clearly unconstitutional.

Only the courts stand between the people and the demand of special classes for favoring laws and now the courts are assailed for their independence and it is seriously proposed to subject their decisions to popular vote.

IV

One reason why the American people have paid comparatively little attention to laws proposed and passed is because they rely for protection upon federal and state constitutions; they assume that no law which is unfair to anybody can be enforced; they cast upon the courts the burden of doing the work they should do themselves through their representatives.

It is notorious that our legislative bodies pass many laws they know are not constitutional; the expression is often heard, "Oh, well, let it go through, the courts will knock it out."

But distinguished as our courts are for their courage and independence, they are composed of men and only human. It is not surprising some of them yield and try to

find ways to sustain laws that others have no hesitation in denouncing as unconstitutional.

Steadily and systematically the independence of the judiciary is being assailed; under threat of "recall" of either men or decisions, or both, judges are being terrorized into rendering *supposedly* popular decisions.

We say "supposedly" for nothing is more certain than that the thinking masses of the people are not in sympathy with either class legislation or with the efforts that are being made to destroy the independence of the judiciary.

V

The American Federation of Labor "is composed of 115 national and international unions, representing approximately 27,000 local unions, 4 departments, 39 state branches, 632 city central unions." The paid membership is about 2,000,000. "The affiliated unions publish about 540 weekly or monthly papers devoted to the cause of labor." There are 1,574 organizers of local unions acting under the orders of the central body.

There is hardly an employment that does not have its union.

Besides the American Federation of Labor there are the Knights of Labor and the Industrial Workers of the World.

In addition and not affiliated with the American Federation are the following nation-wide unions: Bricklayers' and Masons' International; Brotherhoods of Locomotive Firemen and Engineers; Brotherhood of Railroad Trainmen; Railroad Conductors' Order.

While the voting strength of 2,000,000 is not great as compared with a total of over 15,000,000 voters in the country, it is a body the average politician fears and therefore favors.

VI

In considering the laws about to be referred to it must be borne in mind that,

The prime object of a labor union is to *advance prices of labor.*

The prime object of a farmers' coöperative society is to *advance prices of produce.*

The prime object of a manufacturers' combination is to *advance prices of goods.*

The fundamental proposition underlying any discussion of these attempts of the several classes to benefit themselves is that *whatever opportunities are open to one class should, in all fairness, be open to the others, without favor, without discrimination.*

But they are not.

Nearly every state has drastic laws against combinations of manufacturers and dealers.

Here are some of the exceptions made in favor of labor and farmers:

VII

The Illinois anti-trust law excepts all parties engaged in mining, manufacture or any industry the cost of the product of which is mainly made up of wages, and also contains a provision that it shall not be unlawful for persons or corporations to enter into joint arrangements of any sort, the principal object or effect of which is to maintain or increase wages.

The law also provides that "the provisions of this act shall not apply to agricultural products or live-stock while in the hands of the producer or raiser."[1]

[1] Referring to this exception, a federal court said: "Can it be claimed that, under this clause, every person within the jurisdiction of

VIII

Montana in its law against combinations provides that it shall not apply

"To any arrangement, agreement or combination between laborers made with the object of lessening the hours of labor or increasing wages, nor to persons engaged in horticulture or agriculture with a view to fixing the price of their products."

Montana and Nebraska both provide that:

"Nothing herein contained shall be construed to prevent any assemblies or associations of laboring men from passing and adopting such regulations as they may think proper, in reference to wages and the compensation of labor, and such assemblies and associations shall retain, and there is hereby reserved to them, all the rights and privileges now accorded to them by law, anything herein contained to the contrary notwithstanding."

South Dakota has a similar exemption.

Montana goes farther than merely protecting labor unions, it expressly provides by law, that state printing shall have thereon the label of the branch of the International Typographical Union of the city in which the printing is done.

Other states have laws protecting the use of union labels and trade marks.

the state of Illinois has equal protection of the laws? Is not this class legislation? Is it in accordance with section I of the fourteenth amendment to the federal constitution, that those who raise agricultural products or livestock shall be excepted from the provisions of a statute which, by its terms, is binding on every other citizen or person within the state? I think clearly not. I am of the opinion that this statute contains both class and special legislation, and is in contravention of both the federal and state constitutions, and therefore void."

IX

Pennsylvania expressly permits the organization of labor unions and authorizes them

"to refuse to work or labor for any person or persons, whenever in his, her or their opinion the wages paid are insufficient, or the treatment of such laborer or laborers, workingman or workingmen, journeyman or journeymen, by his, her or their employer, is brutal, or offensive, or the continued labor by such laborer or laborers, workingman or workingmen, journeyman or journeymen, would be contrary to the rules, regulations or by-laws of any club, society or organization to which he, she or they might belong, without subjecting any person or persons so refusing to work or labor to prosecution or indictment for conspiracy under the criminal laws of this commonwealth."

X

Louisiana has this constitutional provision:

"It shall be unlawful for persons or corporations, or their legal representatives, to combine or conspire together, or to unite or pool their interests, for the purpose of forcing up or down the price of any agricultural product or article of necessity for speculative purposes, and the legislature shall pass laws to suppress it."

But the laws of Louisiana expressly provide:

"That the provisions of the act shall not apply to agricultural products or live-stock while in the hands of the producer or raiser; nor be construed as to affect any combination or confederation of laborers for the purpose of increase of their wages or redress of grievances."

XI

The anti-trust act of Michigan contains this provision:

"The provisions of this act shall not apply to agricultural products or live-stock while in the hands of the producer or raiser, nor to the services of laborers or artisans who are formed into societies or organizations for the benefit and protection of their members."

The Mississippi anti-trust law contains this exception:

"But this shall not apply to the associations of those engaged in husbandry in their dealings with commodities in the hands of the producer, nor to the societies of artisans, employees and laborers formed for the benefit and protection of their members."

North Carolina's anti-trust law says:

"The act does not apply to agricultural products while in the hands of the producer, nor to the lumber interest of the state, neither shall it prevent cotton or woolen mills from regulating the amount of their output or selling the same through an agent."

XII

The following states have laws which expressly prohibit any employer from discharging or threatening to discharge any employee because of his connection with a labor union: Illinois, Indiana, Kansas, Minnesota, Montana, Tennessee, Missouri, Ohio, Wisconsin.

The laws of Massachusetts provide for the organization and incorporation of labor associations, as do also the laws of Maryland.

Michigan makes provision for the incorporation and management of workingmen's associations and also for the organization of builders' and traders' exchanges. Also for

the incorporation of local assemblies of Knights of Labor and Sons of Industry.

Stronger and stronger pressure is being brought to bear upon Congress to induce it to exempt labor unions from the operation of the Sherman Act.

XIII

It would be out of place in a book of this character to enter into an extended discussion of the constitutional questions raised by these attempts to expressly permit certain classes to do things forbidden other classes.

The question is not one of *law* simply, but rather of *fair play,* of what is *right* and *just.*

It does not need a lawyer to convince the average citizen that these laws are *not right, not fair, not just;* and no community can persist long in the course indicated by such legislation and last—it is building, not upon a foundation of justice, but upon the shifting sands of popular prejudice.[1]

[1] Speaking of the Texas anti-trust law, which is sweeping in its terms and penalties *as against certain classes,* the federal court had occasion to say (*in re* Grice, 79 Fed. R. 627):

"The exemption of agricultural products in the hands of the original producer and raiser exempts, upon a rough estimate, four-fifths of the people of Texas from the operation of this act, because four-fifths of the people of Texas are engaged in the business of producing and raising agricultural products and livestock. The penalties are visited upon the remaining one-fifth of the people, without regard to any particular class. This one-fifth comprises all classes not heretofore exempted. And this is in face of the constitutional guaranties, state and federal, of perfect equality of the citizen before the law. Even in the matter of labor, the iniquitous character of the enactment under discussion is apparent. This statute makes no exemption of labor, or of the products of labor. Under its terms and provisions the laborer is subjected to punishment for doing the very act that the land-owner or farmer is authorized to do. The original producer, if a farmer, has authority to combine to fix prices, restrict trade, build up monopolies, while the original producers in other lines of labor are denounced for combining. The agricultural products of the farmer are the fruits of his labor, but no more so than the manufactured articles of the work-

XIV

We have mentioned some of the *direct* attempts to exempt certain favored classes from the operation of laws aimed at other classes, but there is the *indirect* and more vicious method of accomplishing the same result, which is to pass laws covering all classes, *but not enforce them against the favored classes.*

ingman are the fruits of his labor. The blacksmith, the carpenter, and all other artisans purchase their raw material, and the manufactured products constitute the fruits of their labor, upon which they must rely for the sustenance of themselves and families, just as the agricultural products of the farmer constitute the fruits of his labor, upon which he relies for similar purposes; yet the statute prescribes total inequality between these classes, and encourages the one to build up monopolies, while denouncing the others, if they make an attempt in the same direction; or, to apply the provisions of the statute to the matter of livestock, from which application this inequality becomes still more apparent, the cattle king may raise his thousands of head of livestock each year, and, so long as his stock remains in his hands, he can combine, not only with his neighbors, but with all other similar original producers throughout the state of Texas, or even throughout the United States, for the purpose of fixing the prices and monopolizing markets. Not so, however, with the hands which he employs, and which constitute the ordinary labor of the ranch. The fruits of the labor of the latter class are his day's work. This may be paid him either in money, which he invests in stock, or it may be paid him in stock, on shares, or otherwise; and yet, not being the original producer, he is forbidden to make any combination of any character whereby the price of the fruits of his labor can be promoted or regulated in any manner whatsoever. These common laborers on the ranch can form no agreement among themselves whereby they can maintain the prices of their labor, and yet the ranch owners can combine with other ranch owners with reference to the prices of their products which constitute the fruits of their labor. The demonstration can be carried to a further absurdity by simply calling attention to the fact that, under the terms of the statute, the farmer or stock-raiser may combine with any person, firm or corporation whatsoever, or any number of them, in respect to agricultural products he has produced, or livestock he has raised, without fear of punishment under the law, and yet the party or parties with whom he makes such a combination may be held liable to all the penalties denounced against such combinations. Two citizens may combine, therefore, for the purpose of fixing prices; one, by doing so, committing a crime, and the other, by doing so, performing a laudable act. If this is equality before the law, within the meaning of the constitution, we had better revise the constitution."

The direct method has at least this merit, it is straightforward and open; the indirect is a cowardly evasion of the issue.

The administration of the Sherman law is an illustration in point.

There is no question that in its terms that act covers combinations of labor and combinations of farmers when they affect interstate commerce. In the few cases that have arisen the courts have been obliged to so hold, *yet practically every prosecution under the act and every bill filed to dissolve* a combination have been against combinations of manufacturers, dealers and railroads, notwithstanding violations by other classes have been open, notorious and flagrant.

The threat of the Brotherhood of Locomotive Engineers to absolutely stop inter-state traffic on over fifty railroads unless their demands for increased wages are granted, is a case in point.

XV

The extent to which the coöperative movement is spreading among farmers is shown by the following, taken from a comprehensive summary by an authority on the subject:[1]

"Anyone who does not follow the subject will be surprised at the extent of successful coöperation among farmers of the United States and the rapidity with which it spreads."

"The producers are finding out in every section of the country that it is necessary; and in every part of the country they are profiting by it."

"In Michigan the grape-growers have very efficient associations."

[1] "The Coöperative Farmer," by John Lee Coulter, a Minnesota farmer, of Mallory, Minn.; member of the Faculty of the University of Minnesota, and Supervisor of Agricultural Statistics of the Census Bureau. See *World's Work*, November, 1911, pp. 59-63.

"In the grain-growing states the farmers own approximately 1,600 grain elevators. These range in value from $4,000 to $10,000, and everyone looks after the marketing of approximately 150,000 bushels of grain." "There are in this region about 200,000 coöperating farmers," . . . "and they *control the sale* of nearly 250,000,000 bushels of grain."

Many of these societies look after the selling of other farm products, act as live-stock shipping associations, and purchase such twine, fuel, fertilizers, and feed as the farmers need.

In the same northern states where dairying is important, there are now probably 2,000 coöperative creameries.

In the same states the farmers own more than 150 cooperative stores, hundreds of coöperative telephone companies, and mutual fire insurance companies.

In Colorado the Grand Junction Fruit Growers are well organized.

In Idaho, Washington, and Oregon, there are a number of local marketing associations.

In California "the fruit growers' exchange *controls the marketing of probably three-fourths of the citrus fruits produced.* Other smaller organizations *control* most of the remainder."

The California Fruit Growers' Exchange is looked upon as the most successful farmers' organization in the United States. "The 10,000 members have about 300 packing houses and produce 50,000 carloads of fruit every year."

The California Fruit Exchange, which is very much like the Fruit Growers' Exchange, looks after the marketing of the deciduous fruits.

"The recently organized Almond Growers' Exchange, with a dozen local societies, *controls* the marketing of considerably more than half the almonds produced in the United States."

"The Walnut Growers' Association, with eighteen local

societies, controls the marketing of 15,000,000 pounds of walnuts, which is probably eighty per cent. of the walnuts grown in the United States."

In Virginia the farmers of two counties have an exchange that handled in 1910 more than 1,000,000 barrels of Irish potatoes and 800,000 barrels of sweet potatoes in addition to thousands of crates of berries and other products.

The apple growers of Virginia are organized and the peach growers of Georgia are struggling with their problem.

"A successful fruit exchange would know almost exactly how much fruit could be shipped from day to day, how many cars would be needed, what the principal rates would be to the different markets, how many cars of peaches the people in the different cities would need from day to day, *what outside competition would have to be met, and practically what prices should be received.*"

That same organization could purchase crates and materials for members and make a saving.

The citrus fruit producers of Florida are trying to follow California methods.

"It is to the interest of all the people of Florida, and indeed of all consumers of good fruit, to help in every possible way to reduce the cost of fruit by better marketing methods, to carry better fruit to the consumers, and at the same time to make the growers more prosperous by giving them *a larger share of what the consumer pays.*"

There are several hundred organizations among the cotton growers.

"There should be several thousand local coöperative unions to *control local gins, warehouses, presses, and oil mills.*"

"The time has passed for petty jealousies and individual bartering. Business must be done in a business-like way."

There are in the lower South and in Tennessee and Kentucky a number of small local societies interested in the marketing of vegetables and such products.

"In Tennessee and Kentucky the tobacco growers have been struggling for some years to improve their conditions. They have made some mistakes. 'Night riding' and limitation of output—both of these were written about but practiced very little—were serious errors. These farmers should follow the lead of the southern cotton growers. First of all, they must own their warehouses; and they should *control the tobacco which they produce until they are able to get fair prices for it.*"

The rice growers in Louisiana and Texas have taken up the new movement. The Louisiana organizations, with headquarters at Crowley, have adopted the methods of the California fruit growers.

Texas truck growers along the southern border are incorporated, membership in 1906 covered 70 per cent. of the crop.

Speaking of the advantages of the movement:

"Educational and social advantages are everywhere noticeable, *but the money gain 'sticks' out clearly or the companies would not last long.*"

"The Farmers' Coöperative Elevator Co. of Wheaton, Minn., handled about 100,000 bushels of grain last year and declared a dividend of 40 per cent. Two years ago the company at Clinton, Minn., declared a dividend of 40 per cent. There are many better records than this."

We have italicised certain portions of the foregoing paragraphs to emphasize the argument to follow.

XVI

Coöperation of labor is here to stay.
Coöperation of farmers is here to stay.

Coöperation of manufacturers and dealers is here to stay.

Those are three vital facts that cannot be disputed, and the man, or body of men, who fights against any one of those propositions is struggling against an irresistible current.

If any one of the three classes denies the right, the moral, the economic, the legal right of either of the others to cooperate, that class cuts the ground from beneath its own feet.

What are the plain truths about the coöperative associations described?

With few exceptions all are organized for the *express purpose of controlling and restraining interstate commerce.*

With few exceptions each is a combination *in violation of the Sherman law*—if the many decisions of the courts against combinations of manufacturers and dealers are applied without fear or favor.

Between a combination of fruit growers that controls the price of fruit and a combination of fruit preservers that controls the price of the same fruit canned, the court does not exist that can draw any fair and logical distinction so far as the ultimate consumer and the Sherman law are concerned, yet no lawyer would dare advise the preservers they could organize to control the prices of preserves.

XVII

In the paragraphs quoted substitute the term "manufacturers" for farmers and try the result on some court that is hearing a case against manufacturers.

Take this: "There are in this region about 200 coöperating mills (instead of 200,000 farmers) and *they control* the sale of 2,500,000 barrels of flour" (instead of 250,000,000 bushels of grain).

Does any man doubt the combination of mills would be held illegal and every member be liable to indictment and conviction? *Yet where is the distinction?*

Again: "The recently organized Association of Almond Dealers (instead of almond growers) controls the marketing of considerably more than half the almonds produced in the United States."

The combination of dealers would be illegal, *yet where is the distinction?*

Again: The association of Wholesale Grocers (instead of Walnut Growers) controls the marketing of 80 per cent. of the nuts grown in the United States.

A grocers' association has been in trouble for doing less, *yet where is the distinction?*

To paraphrase further—a successful combination of salt companies (instead of fruit exchanges) would know almost exactly how much salt could be shipped from day to day, how many cars would be needed, what the freight rates would be to the different markets, how many cars of salt (instead of peaches) the people in the different cities would need from day to day, *what outside competition would have to be met, and practically what prices should be received.*

The salt makers have tried this and their combination was held illegal, *where is the distinction?*

Lastly, while in the coöperative movement "educational and social advantages are everywhere noticeable, the money gain 'sticks out' clearly, or the companies would not last long."

That is precisely the objection urged by the courts against combinations of manufacturers and dealers—the "money gain 'sticks out,'" *yet where is the distinction?*

XVIII

The foregoing comparisons are made in no spirit of antagonism to the coöperative movement among farmers—*it is here to stay,* and every disinterested man should wish it God-speed.

They are made for the purpose of enlisting the *friendly interest of the farmers themselves in a broader and less selfish coöperative movement;* to induce them to take a wider and fairer outlook and see that what is good for them must be equally good for labor on the one hand and manufacturers, dealers, and railroads on the other; that if it is good for growers of wheat and cotton to coöperate *it must be equally good* for makers of flour and cotton-goods to cooperate, and all for substantially the same purposes.

XIX

It is curious how the abuse of words tends to bias our reasoning.

The misuse of the term "capital" is responsible for no end of mischief.

In economic literature and every day speech it is common to use the phrase, "labor" and "capital" as if the two were antagonistic, opposed one to another.

As a natural result all sympathy veers to the side of labor and a false issue is created.

Why?

Because labor is *human* and capital is *material,* and when the impression is conveyed that labor is arrayed against capital, sympathy inevitably flows to the human side.

Capital is simply wealth used to produce more wealth. It is at the service of anybody and everybody; *capital would exist just the same in a socialistic community.*

Labor may have a quarrel with *employers,* whoever they may be, but *not with capital.*

Labor *and* capital are required to produce wealth, just as a man *and* a spade are required to dig, and there is no more antagonism between labor and capital than between a man and the spade which is *his* capital.

Comparatively few laborers do not own some capital. In a sense the clothes on their backs and the dinner pail in their hands, to say nothing of the tools they own, are capital.

The farmer is a capitalist to the extent of over 28 *billions* of dollars in land, over 6 *billions* of dollars in buildings and over *one and one-quarter billions* in implements.

The farmers of a single state, Iowa, have over $95,000,000 in implements alone.

The farmers have about *twice as much* in lands, buildings and implements—excluding all other items—as the manufacturers of the country have in their factories.

All the trusts put together make a small total as compared with farm values.

The use of the term "capital" to mark divisions between classes is productive of irreparable mischief.

XX

There are two great classes in every country—those who work for wages, and those who pay wages—*employees* and *employers.* In this connection the term labor may be used —though by no means accurately—for employees, but by no stretch of language is it permissible to use "capital" as the equivalent of employers.

Much of the literature and three-fourths of the speeches on the wrongs of labor would lose their seeming force if for the term "capital" wherever used were substituted the

human term actually meant—manufacturers, contractors, employers generally.

There would remain the natural rivalry between those who receive and those who pay wages, but belief in an irrepressible conflict would disappear, since we all know that in this country most men at some time in their lives work for wages, and most men at different times pay wages.

The farmer is not only the greatest capitalist in the country, but he is a great employer of labor. In 1909 he paid out $645,000,000 in wages.

An article on farm life says:[1]

"In reply to the question, 'What, in your opinion, is the greatest need of the farmer of to-day, or the greatest problem with which he must contend?' one hundred and eleven out of 440 Missouri farmers answered, 'Hired help'." [2]

[1] "The Farmers on Farm Life," *World's Work*, November, 1911.

[2] More than ten years ago, in a work on "The Law of Combination," the writer said:

"In the production of wheat, for instance, the farmer has his capital invested in land and improvements thereon, tools and implements, horses, wagons, seed, etc.; it is still necessary for him to hire more or less labor in the course of the year, and especially about harvest time, in order to make his wheat ready for the market and dispose of same; so far as the cost of production of the wheat is concerned, both the items of labor and consumption of capital are outlays which must be recouped in the price, otherwise the production of the wheat is a loss. So far as the farmer is concerned, it is immaterial whether a combination of labor advances the wages of his harvest hands, or a combination of manufacturers advances the cost of his reaping and threshing machinery: both advances must be recouped in the price of the wheat. Confining our view for the moment to the hypothetical farmer, it would be manifestly unjust to forbid him by law from combining with other farmers to get a better price for his wheat, if the law permits labor to combine to make him pay higher wages, and manufacturers to combine to make him pay higher prices for his reaping and threshing machinery. What is true in this connection concerning the producer of wheat is true of the producer of every other commodity."

XXI

In all these coöperative movements farmers are capitalists just as much as makers of iron and steel are capitalists. In the article referred to it is said the farmers of certain grain-growing states own 1,600 grain elevators and "have invested about $15,000,000." Few steel companies have that investment.

The Tamarack coöperative association of Michigan on February 18th, 1911, declared to purchasers of goods its twentieth annual dividend, $104,821.60, equal to 162 per cent. on its capital stock. Since its organization this society has done a business of $8,113,917.85 and returned to its members rebates of $938,033.67. Few manufacturing or mercantile concerns of anything like the same size can make equal showing.

In January, 1906, the Texas truck growers organized their association "with a capital of $10,000. Shares were to be sold at $1 each, but every member was required to buy at least five shares, he was required, however, to pay only thirty per cent. of his subscription at the beginning. Thus any farmer could easily join the organization. Growers of about seventy-five per cent. of the crop for 1906 became members, and that year the association marketed 900 carloads. In 1909 it handled 2,500 carloads with an approximate value of $1,500,000."

In its capitalization, paying in of only thirty per cent., its control of the industry, and its rapid development, the history of this association reads like the story of a New Jersey trust in the deft hands of Wall street promoters—but it is nothing of the kind, it is simply the natural and logical banding together of a number of farmers to get better prices for what they raise.

XXII

In this coöperative movement the farmer—though he may not realize it—stands shoulder to shoulder with the manufacturer; the labor unionist shoulder to shoulder with his employer.

The problem is a large one and demands the harmonious efforts of all to solve it.

Just now the farmer clamors for a more drastic Sherman law. The labor unionist has been hurt by that same law and clamors for some amendment or interpretation that will exempt his union, and yet smash the employers' combination.

The far-seeing labor-leader is already calling a halt upon indiscriminate assaults upon associations of employers, he sees that their coöperation is essential if his union is to survive.

A century ago the labor union was as obnoxious to the public and to legislatures as a trust is to-day. The union has outlived all that odium, and is condemned to-day only for what it does that is unfair or criminal.

The time will come when unions of manufacturers and other classes will be treated as legal and natural and be condemned only for what they do that is unfair or criminal.

Union *per se* will not be a crime in any class.

XXIII

Not only have legislatures, as already shown, recognized the legal and economic status of labor unions, but the courts in almost countless cases have approved their existence, approved them as combinations for the purpose of controlling wages.

The Court of Appeals of New York said:

"In the general consideration of the subject, it must be premised that the organization or the coöperation of workingmen is not against any public policy. Indeed, it must be regarded as having the sanction of the law when it is for such legitimate purposes as that of obtaining an advance in the rate of wages or compensation or of maintaining such rate. It is proper and praiseworthy, and perhaps falls within that general view of human society which perceives an underlying law that men should unite to achieve that which each by himself cannot achieve, or can achieve, less readily." [1]

President Taft when on the bench said:

"It may be conceded in the outset that the employees of the receiver had the right to organize into or to join a labor union which should take joint action as to their terms of employment. It is of benefit to them and to the public that laborers should unite in their common interest and for lawful purposes. They have labor to sell. If they stand together they are often able, all of them, to command better prices for their labor than when dealing singly with rich employers, because the necessities of the single employee may compel him to accept any terms offered. The accumulation of a fund for the support of those who feel that the wages offered are below market prices is one of the legitimate objects of such an organization. They have the right to appoint officers who shall advise them as to the course to be taken by them in their relations with their employer. They may unite with other unions. The officers they appoint, or any other person to whom they choose to listen, may advise them as to the proper course to be taken by them in regard to their employment, or, if they choose to repose such authority in any one, may order them, on pain of expulsion from their union, peaceably to leave the employ of their employer because any of the terms of their employment are unsatisfactory." [1]

[1] Curran vs. Galen et al. (1897), 152 N. Y. 33, 46 N. E. R. 297.
[1] Thomas *vs.* Cin. N. O. & T. P. Ry., 62 Fed. Rep. 803.

Labor has achieved its emancipation, it has won the right to combine to control wages.

Farmers have practically, though not so explicitly, achieved their emancipation, they are tacitly conceded the right to combine to advance prices.

It is certain that in the near future *employers generally*—manufacturers, merchants, producers of all classes, will achieve their emancipation, will win the right to combine to regulate the prices of what they have to sell.

At present the country is in the anomalous and highly unstable condition of being *half free, half slave.* Laborers are *entirely free* to combine; farmers are *half free, half slave;* manufacturers, merchants and dealers are *all slave.*

Even railroads are better off than manufacturers and dealers; they combine to fix rates, though the law in terms forbids. Railroads must act in concert regarding rates and therefore they do. Because of this fact President Roosevelt twice urged Congress to amend the law so as to permit the roads to do legally what they are now forbidden to do, but compelled by conditions to accomplish indirectly.

XXIV

Manufacturers and dealers are punished for *simply combining;* courts even go so far as to point out that the particular combination under investigation may have done no one any harm, may even have done good.

The State of Missouri filed suit against the International Harvester Company of America.[1] When the case

[1] The International Harvester Company *of America* is a Wisconsin corporation; it is the selling corporation for the products of the International Harvester Company of New Jersey, the manufacturing company. The New Jersey company owns all the stock of the Wisconsin

reached the Supreme Court the several judges in their opinion found:

"In 1902, when the negotiations which led up to the organization of the International Harvester Company were begun, competition between the large harvester machine companies in the United States was such as to reduce the market to *a condition that was deplorable from the standpoint of the competing companies and it is not certain that its tendency was toward the ultimate advantage of the consumer of those machines.* Whilst the tendency of fair competition is to produce a wholesome condition of the market, yet competition may be of such a character and so designed as to destroy the weaker competitors, leaving only the giant in the field, who then would have a monopoly of the market."

"The evidence also shows that the price of harvester machines was not materially higher after the New Jersey corporation entered the field than it was before, until 1908, when it was increased eight or ten per cent., whilst in the meantime there had been a greater increase in the price of the material and labor used in their construction. The evidence also shows that whilst harvesting machines were the chief products of the companies absorbed by the International Harvester Company, that company has greatly enlarged its business and extended it to many other farm implements and has thus put itself in competition with the many concerns that theretofore were and still are engaged in manufacturing such other farm implements, and *the farmers generally have profited thereby.* The evidence also shows that the machines manufactured by the International Company have been greatly improved in quality, and the item of repair material has been reduced in price and placed within closer reach of the farmer. *On the whole, the evidence shows that the International Harvester Company has not used its power to oppress or injure the farmers who are its customers.*"

"In this case the court is required by the statute to pronounce a judgment of condemnation upon a combination

corporation. The New Jersey company had no plant, and maintained no office in Missouri, consequently was not a party to the suit.

which is proved by the facts as they appear in this record to have been so far *beneficial to the community.*" [1]

[1] In Cote *vs.* Murphy et al. (1894), 159 Pa. St. 420, the court said: "The fixed theory of courts and legislators then was that the price of everything ought to be, and, in the absence of combination, necessarily would be, regulated by supply and demand. The first to deny the justice of this theory, and to break away from it was labor; and this was soon followed by the legislation already noticed, relieving workmen from the penalties of what for more than a century had been declared unlawful combinations or conspiracies. Wages, it was argued, should be fixed by the fair proportion labor had contributed to production; the market price, determined by supply and demand, might or might not be fair wages, often was not, and as long as workmen were not free, by combination, to insist on their right to fair wages, oppression by capital, or, which is the same thing, by their employers, followed. It is not our business to pass on the soundness of the theories which prompt the enactment of statutes. One thing, however, is clear: the moment the legislature relieves one, and by far the larger number of the citizens of the commonwealth from the common-law prohibitions against combinations to raise the price of labor, and by a combination the price was raised, down went the foundation on which the common-law conspiracy was based, as to that particular subject. Before any legislation on the question, it was held that a combination of workmen to raise the price of labor, or of employers to depress it, was unlawful, because such combinations interfered with the price, which would otherwise be regulated by supply and demand. This interference was in restraint of trade or business and prejudicial to the public at large. Such (a) combination made an artificial price. Workmen, by reason of the combination, were not willing to work for what, otherwise they would accept. Employers would not pay what otherwise they would consider fair wages. Supply and demand consist in the amount of labor for sale, and the needs of the employer who buys. If more men offered to sell labor than are needed, the price goes down, and the employer buys cheap. If fewer than required offer, the price goes up, and he buys dear. As every seller and buyer is free to bargain for himself, the price is regulated solely by supply and demand. On this reasoning was founded common-law conspiracy in this class of cases. But, in this case, the workmen, without regard to the supply of labor, or the demand for it, agreed upon what, in their judgment, is a fair price, and then combined in a demand for payment of that price. When refused, in pursuance of the combination they quit work, and agree not to work until the demand is conceded. Further, they agree, by lawful means, to prevent all others, not members of the combination, from going to work until the employers agree to pay the price fixed by the combination. And this, as long as no force was used, or menaces to person or property, they had a lawful right to do; and so far as is known to us, the rise demanded by them may have been a fair one. But it is nonsense to say that this was a price fixed by supply and demand. It was fixed by a combination of workmen on their combined

XXV

Enough has been said to satisfy the impartial reader that the drift is toward larger and larger coöperation, and that, too, despite attempts to legislate to the contrary.

Naturally manufacturers are timid about entering any form of association, for they cannot know at what moment they may be indicted as criminals. As a result more or less demoralization prevails in almost every industry, demoralization of prices, demoralization of methods. All the evils, all the unfair, oppressive and vicious practices of the old competition prevail.

The basic proposition of the Open-Price Association, namely, that men have the right to publish prices and make known all conditions surrounding business, is so far beyond debate or question that it is practically axiomatic; if they have that right it goes without saying they have the right to coöperate in any manner necessary to gather and publish the information.

Spreading of knowledge of facts and conditions is one of the enlightened efforts of the age. The theory is that if a man can be fully informed regarding all he has to contend with, he will be in a better position to get fair wages and fair prices.

The prime object of the Department of Agriculture is to enable farmers to get *better crops* and *better prices.* The

judgment as to its fairness; and, that the supply might not lessen it, they combined to prevent all other workmen in the market from accepting less. Then followed the combination of employers, not to lower the wages theretofore paid, but to resist the demand of a combination for an advance; not to resist an advance which would naturally follow a limited supply in the market, for the supply, so far as the workmen belonging to the combination were concerned, was, by combination, wholly withdrawn, and as to workmen other than members, to the extent of their power, they kept them out of the market. By artificial means the market supply was wholly cut off."

prime object of the Department of Commerce and Labor is to enable labor to get *better terms* and *better wages.*

It ought to be the object of some department to help manufacturers and dealers to get *better returns for better products.*

But so far the only solicitude betrayed by any department of the government regarding manufacturers and dealers is to force them to sell at the lowest prices under the most adverse conditions.

Class legislation and discrimination must go.

CHAPTER XX

CONSTRUCTIVE LEGISLATION

I

We are on the eve of great things.

For more than ten years the country has been tugging at the leash of legislation that hinders progress.[1]

The Sherman law is *destructive* in *purpose* and *application*. State "anti-trust" acts are framed to *tear down* and *destroy*—what?

Coöperative movements that are the logical, the inevitable results of economic conditions.

II

Law has so little meaning to most men they look upon it as a cure-all and give it in large doses for every ill, whereas of all remedies it is the most difficult to rightly administer.

[1] "In my judgment, the present law against pools, trusts, and combinations is ineffective to protect the people against combinations of capital. The courts may dismember an organization, but they will hardly attempt to confiscate its property; so that, after dismemberment, the ownership and control will continue substantially as before. To permit combinations to exist, and at the same time secure to the people the natural and legitimate benefits of such combination, is a problem not yet solved. To forbid, as the law in question does, the existence of all combinations that lessen competition compels a halt in the natural march of industrial development, and deprives the people of the benefits which should result from improved business methods."—By Judge Ferriss, in State *vs.* International Harvester Co. of America, 237 Missouri 369.

Men are so perversely constituted they seem to prefer compulsion to coöperation; they call upon the state to compel them by law to do what they ought to do for themselves, to frame rules of conduct they should voluntarily devise for their own protection.

While it is true the rise of freedom is the development of law, it is also true that the history of the law is one long story of man's fight for liberty.

Which is but another way of saying that the rules of conduct which define—and by defining, create—liberty, yield slowly and stubbornly to the irresistible forces of progress, thereby making law to appear a laggard in the march of events, but that is its value, for if it yielded to every passing impulse, every wave of opinion, it would not be law, but anarchy.

Is it not strange how men in all ages appeal to this conservative force to accomplish the most radical things—appeal to law to overturn law, pass laws to do things repugnant to the fundamental concepts of law?

Except for mischief, a law is of no effect unless it expresses what the people really want and what they believe to be fair and right.

III

This is a big country and does things in a big way; it is a rich country and it does things with the reckless prodigality of suddenly acquired wealth. Whatever we do is done on the scale of ninety millions of people and one hundred and thirty billions of riches.

We have grown so fast, made money so fast, that we are wasteful, extravagant, careless. We do things we ought not to do both in the making and in the spending. We have taken little thought of the morrow because the day is filled with such golden opportunities.

But our speed has become so headlong, developments have piled upon developments so fast, changes followed changes with such breathless rapidity, the people are frightened; the very size of things startles them. As fortunes got bigger and bigger, and corporations became more and more powerful, and trusts were formed, it was thought time to call a halt, and laws were passed to curb—*progress!*

IV

These laws are not well drawn because what they were aimed at was not well understood.

The "trust" was looked upon as a thing apart, as a monster to be annihilated. It was not clearly seen that the trust is just as legitimate, just as logical a development of economic conditions in this marvelous country as are the corporation and the partnership. The trust is simply one of our big ways of doing things, and in and of itself the billion dollar corporation doing business in the world at large is no more to be feared than the million dollar corporation doing business in a small town, or the ten thousand dollar partnership doing business in the country village, each may dominate its particular sphere, and dominate it in the same way and by precisely the same methods, and each may abuse its powers.

V

Of all peoples on the face of the globe the American people ought to be the least fearful of *mere size.*

But we are—or rather have been, for fear of size is passing. We have framed laws aimed not at methods but at magnitude. We passed the Sherman Act which is aimed at size, and for many years the courts applied that act to

combinations *irrespective whether the things they did were fair and reasonable or not,* but of late a change has come over the country, our eyes are becoming accustomed to magnitude, no longer do we jump at the sight of a trust like a small boy at a shadow in the dusk; we are beginning to see that size has its advantages as well as its disadvantages; that it enables men to do things on a scale commensurable with the wealth, the resources, the power of the country—in short that the much feared, much hated trust may have its place in the economy of national and international trade.

VI

When the Sherman law was passed there were so few trusts in existence no one knew much about them; now—twenty odd years after—there are so many in every state, in every city, in almost every country town that the average school boy knows all about them. They have been so denounced, debated, discussed that no one is ignorant of their number, their steady increase, and their uses.

The common people have come to see clearly that there is very little difference between combinations—trusts—of labor, and combinations of farmers, merchants, manufacturers. They all have in view the one end—better returns for their efforts.

As a natural result the old *destructive* laws have fallen into *disrepute,* and there is a wide demand for *constructive legislation.*

VII

Many so-called progressives, or radicals, loudly oppose the repeal of the Sherman law, but even they admit the absolute need of supplemental legislation, and it is quite

apparent from the bills they have introduced or advocated in Congress that while they oppose all *direct* attacks on the Sherman law, they concede it is obsolete and mischievous in its operations.

The more the entire subject is debated, the clearer it is that public sentiment is crystallizing in favor of legislation that will *regulate* instead of *destroy,* that will get all there is of good in trusts and large combinations and suppress all there is of evil, and out of this sentiment will spring the much more vital conviction that before trusts and large corporations can be effectually dealt with *all that is evil, oppressive and unfair in the practices of the* INDIVIDUAL *must be suppressed.*

In other words, we are on the road that leads straight toward the adoption of *higher standards of conduct in commerce and industry.*

VIII

The agitation against trusts has led to a critical examination of the conduct of the individual and men see to-day as they have never seen before that the trouble lies within and not without.

A law aimed at a ten million dollar corporation or a billion dollar trust because of its size is no law at all, it is merely an expression of blind prejudice since the corporation or trust half the size may do things far more oppressive and unfair.

The large corporation may need more careful watching, greater publicity, because its power is so great, and without watchfulness on the part of the public and publicity in all its operations it may be tempted to abuse its advantages, but kept within the bounds of fair and straightforward dealing, its size may be of great value to the community.

IX

It is easy and instinctive to condemn what we do not understand. It is much easier to pass a law aimed at this, that or the other *object,* than it is to frame a law that will reach and correct abuses. It is far easier to frame a law that will hit the Standard Oil Company than it is to frame one that will search out and condemn oppressive and unfair methods *whether used by a corporation or an individual.*

X

Anti-Trust legislation has been drawn along the lines of least resistance; it is safe to say that no law has been passed against trusts and monopolies that has not been framed with some conspicuous trust in mind, and in probably every instance, the Standard Oil Company. That legislation so important and far-reaching in its general consequences should turn on popular hatred for one large company is a confession of weakness.

XI

But the tide has turned, there is a loud and louder demand for laws that will *remedy abuses—no matter by whom practiced.* There is a demand for better standards of business morality, for a better business code. There is an opportunity for statesmanship of the highest order. Our Representatives and Senators may not realize the extent and the character of this golden opportunity; most of them may cling close to the ground to catch the murmurings of shifting public opinion; most of them may try to talk and vote as they *think* the people would like to have them talk and vote; few may understand that in the long run the people

love and respect the men who talk and vote as their consciences dictate.

But there are men who are looking far ahead, who are anxious to have a part in doing things that will help make the history of their country, who wish to have a part in the adoption of an enlightened constructive policy and the future depends upon their conscientious efforts.

The much vaunted Sherman law will pass into economic history along with such English laws as those against "regrating," "forestalling," and "engrossing," and laws against labor unions—as one of man's many futile attempts to check evolution. Its chief value lies in the fact it has aroused the country, made men see the necessity of doing something of affirmative value.

XII

More than once in the preceding chapters we have indicated some of the things the *new laws* will provide for and against; a brief summary, however, will not be out of place in these concluding pages.

Any law that is formed should be comprehensive in its scope and with two prime objects in view.

A. PUBLICITY—the frank and free disclosure of all competitive practices.

B. REFORM—the suppression of all dishonest, fraudulent, oppressive and unfair business methods. Publicity will accomplish three-fourths of the reforms.

The law should provide for:

1. A Federal Commission to hear and adjust all controversies arising under the law. Inasmuch as the principles governing the deliberations of the proposed commission would be essentially the same as the principles controlling the decisions of the Interstate Commerce Commission, the two should be branches of the one tribunal; this would be

all the more appropriate in view of the additional fact that many important trade and industrial questions could not be determined without taking into consideration rates and questions of transportation.

This Commission would need to have branch courts or divisions in different sections, with, possibly, agents or deputy commissioners in every city of importance; say every federal judicial district—these are matters of detail.

2. Every corporation engaged in interstate commerce should be required to take out a license and file certain general information regarding capitalization, capacity, output, etc., etc., and such other details as the development of the new plan shows to be important. Federal incorporation may be desirable but is not essential.

Whether individuals and partnerships engaged in interstate commerce should come under all the provisions of the law is a matter of serious consideration, the law may, and very properly should, recognize the distinction that exists between the individual or the partnership and the corporation. The latter being a *legal entity* and wholly dependent upon the law for permission to do business at all, may be subjected to more rigid requirements. In fact, if it should be so desired, the law at first might be made to include *only corporations,* leaving individuals to come under its provisions later as they become convinced of the value of publicity and frankness.

But if individuals are to be allowed to complain of the acts of corporations, they, in turn, should be subject to the same rules of fair conduct, for an individual, having less at stake, may hurt a corporation by unfair competition more than the corporation can hurt him.

3. Require the use of a *uniform system of accounting,* especially of *cost accounting,* and make any intentional failure to keep absolutely truthful and accurate records of *all purchases* and *all sales* a punishable offense.

4. Make the following acts punishable:

(a) Billing at other than actual terms.

(b) Secret rebates, terms, commissions.

(c) Shipping of quantities or qualities of goods other than those described in invoices.

(d) False or misleading statements regarding (*a*) *costs,* (*b*) *sales,* and (*c*) *prices charged others.*

(e) Refusal to tell one buyer when lower prices have been charged others for similar goods. This provision would do more than anything else to bring about *fair* and *frank* trading.

5. Make the following acts subject to rigid investigation on complaint of any party claiming to be injured, and make them punishable if it should appear they were done with intent to injure anyone.

(a) Selling at, or below, cost.

(b) Selling to one man on better terms than are charged his competitor.

(c) Selling in one locality at different prices from those charged in another—all other conditions being equal.

The foregoing general provisions constitute a business code appropriate to *all,* whether individuals, partnerships, corporations or trusts—it would tend toward *fair trade* and *higher business standards.*[1]

The following have to do with the formation of associations to help trade conditions, and which would be useful in applying the principles of the new code. In fact, without associations it would be impossible for a federal commission to enforce the proposed provisions which are general in character. Only the parties engaged in a trade or industry are in a position to work out the details, and formulate the rules necessary to compel obedience. The public does not realize how eager the best business men are to do some of these very things, how gladly they would "blacklist" the

[1] See German code, appendix, pp. 358, 359.

manufacturer or dealer who resorts to tricky or unfair practices, but the law as it stands does not permit them to get together and act as a unit; the following suggestions are made to meet this condition:

6. Remove all restrictions upon the organization of associations and combinations to control occupations, trades and industries; on the contrary directly encourage such organizations, encourage men to do for themselves the things that should be done, but under the following conditions:

(a) Each association shall file its articles of agreement and the details of its organization with the proper federal department.

(b) Its meetings shall be open to any representative of the government who, in the performance of his duties, wishes to attend, and he shall have power to examine all records, files and papers, and to question officers and members regarding not only the transactions of the association, but their own acts in furtherance of the objects of the association.

(c) Power in the federal commission, upon complaint of any party, to review the acts of the association, if necessary revise and fix prices and conditions of purchases and sales, award damages, enforce penalties, dissolve the association.

(d) Power, also, to require publicity and to name conditions under which representatives of (a) employees, (b) parties who sell to members of association, and (c) customers, may attend the meetings of the association.

With these broad general provisions the country would have nothing to fear from combinations however large. Their influence would be beneficial, and each would work out for its own occupation, trade or industry such rules as would be necessary for compliance with the letter and spirit of the new code.

Every objection that can be urged against these suggestions was urged with no greater force against the interstate commerce law, yet sharply as that law has been criticized by railroad men here and there, the railroad world as a whole would not go back to the old demoralized conditions that prevailed in the days of unfettered competition, the days of secret rebates, of arbitrary and unfair discrimination in rates.

Ten years from now manufacturers will look back upon existing conditions in the industrial world as equally barbaric.

APPENDIX I

CONDITIONS IN CANADA

The Canadian Criminal Code makes it an indictable offense, punishable by fine and imprisonment, for any one to conspire, combine or agree with any person or any transportation company to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be the subject of trade or commerce; or, to restrain or injure trade or commerce in relation to any such article or commodity; or, to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or, to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, or supply of any such article or commodity, or in the price of insurance upon person or property.

In 1910 an Act was passed providing for the investigation of combinations, monopolies, trusts, and mergers. This Act is a step in advance of anything attempted in this country. It provides, first of all, for the appointment of a Registrar of Boards of Investigation. It then goes on:

"Where six or more persons, British subjects resident in Canada and of full age, are of opinion that a combine exists, and that prices have been enhanced, or competition restricted by reason of such combine, to the detriment of consumers or producers, such persons may make an application to a judge for an order directing an investigation into such alleged combine.

"2. Such application shall be in writing, addressed to the judge, and shall ask for an order directing an investigation into the alleged combine, and shall also ask the judge to fix a time and place for the hearing of the applicants or their representative.

"3. The application shall be accompanied by a statement setting forth:

"(a) The nature of the alleged combine and the persons believed to be concerned therein.

"(b) The manner in which the alleged combine affects prices or restricts competition, and the extent to which the alleged combine is believed to operate to the detriment of consumers or producers.

"(c) The names and addresses of the parties making the application and the name and address of one of their number, or of some other person whom they authorize to act as their representative for the purposes of this Act and to receive communications and conduct negotiations on their behalf.

"4. The application shall also be accompanied by a statutory declaration from each applicant, declaring that the alleged combine operates to the detriment of the declarant as a consumer or producer, and that to the best of his knowledge and belief the combine alleged in the statement exists, and that such combine is injurious to trade, or has operated to the detriment of consumers or producers in the manner and to the extent described, and that it is in the public interest that an investigation should be had into such combine."

Within thirty days after receiving the application, the judge is to fix a time and place for hearing applicants. At such hearing applicants may appear in person or by counsel.

"If, upon such hearing, the judge is satisfied that there is reasonable ground for believing that a combine exists which is injurious to trade, or which has operated to the detriment of consumers or producers, and that it is in the public interest that an investigation should be held, the judge shall direct an investigation under the provisions of this Act; or, if not so satisfied, and the judge is of opinion that in the circumstances an adjournment should be ordered, the judge may adjourn such hearing until further evidence in support of the application is given, or he may refuse to make an order for an investigation."

The order of the judge directing investigation is transmitted to the Registrar by registered letter,

"and shall be accompanied by the application, the statement, a certified copy of any evidence taken before the judge, and the statutory declarations. The order shall state the matters to be investigated, the names of the persons alleged to be con-

cerned in the combine, and the names and addresses of one or more of their number, with whom, in the opinion of the judge, the Minister should communicate, in order to obtain the recommendation for the appointment of a person as a member of the Board, as hereinafter provided."

Thereupon, a Board of Investigation is appointed, consisting of three members, one of whom is appointed on the recommendation of the persons who made the complaint, the second on the recommendation of the persons against whom the complaint is made, and the third on the recommendation of the two members so chosen.

Provision is made for failure of parties to agree on members. The third member of the Board acts as its chairman. Before entering upon their duties, each member is required to take an oath, the form of which is prescribed in the Act.

"Upon the appointment of the Board, the Registrar shall forward to the chairman copies of the application, statement, evidence, if any, taken before the judge, and order for investigation, and the Board shall forthwith proceed to deal with the matters referred to therein.

"The Board shall expeditiously, fully and carefully inquire into the matters referred to it, and all matters affecting the merits thereof, including the question of whether or not the price or rental of any article concerned has been *unreasonably* enhanced, or competition in the supply thereof *unduly* restricted, in consequence of a combine, and shall make a full and detailed report thereon to the Minister, which report shall set forth the various proceedings and steps taken by the Board for the purpose of fully and carefully ascertaining all the facts and circumstances connected with the alleged combine, including such findings and recommendations as, in the opinion of the Board, are in accordance with the merits and requirements of the case.

"2. In deciding any question that may affect the scope or extent of the investigation, the Board shall consider what is required to make the investigation as thorough and complete as the public interest demands.

"The Board's report shall be in writing, and shall be signed by at least two of the members of the Board. The report shall be transmitted by the chairman to the Registrar, together with the evidence, taken at such investigation certified by the chairman, and any documents and papers remaining in the custody

of the Board. A minority report may be made and transmitted to the Registrar by any dissenting member of the Board."

In the event the persons charged are found guilty of any of the acts complained of the statute provides (1) that the Governor in Council may direct that competing goods be admitted into Canada free of duty. (2) That if the exclusive rights and privileges granted under a patent have been abused, information may be filed in the Exchequer Court praying for judgment revoking such patent. (3) A penalty not exceeding $1,000.00 and costs, for each day after the expiration of ten days, or such further extension of time as in the opinion of the Board may be necessary, from the date of the publication of the report of the Board in *The Canada Gazette,* during which such person so continues to offend.

"The object of this legislation, as expressed in the last annual report of the Department of Labour, is to 'place at the disposal of the people a readier and, it is believed, a more effective means than is now available in Canada of disclosing and of remedying the abuses of combines which may be formed, whether as corporations, monopolies, trusts, or mergers, or in the looser forms of agreements, understandings, or arrangements, for the purpose of *unduly* enhancing prices or of restricting competition to the detriment of consumers or producers.' In the last annual report of the Department of Labour, a chapter was devoted to this measure, and the text of the same was also published in the form of an appendix." [1]

Up to the present time (July 1, 1912) only one application has been made and one Board established, and that in the case of the United Shoe Machinery Company, a Canadian corporation. Application was made on November 10, 1910, but proceedings were stayed by various judicial orders until November, 1911, when the investigation proceeded at Montreal, Toronto, and Quebec, and subsequently completed, but the report of the Board is not yet filed.

[1] Report of Proceedings under The Combines Investigation Act for the year ended March 31, 1911, being an Appendix to Annual Report of the Department of Labor, 1910-11.

APPENDIX II

CONDITIONS IN ENGLAND

The law in England regarding combinations to maintain prices is in a peculiar condition. It neither approves nor condemns. It simply declines to enforce such agreements. In so far as they restrain trade, they are "unlawful," because monopolies are repugnant to English law, but there is no provision by law for their suppression.

The English courts are committed to this general proposition:

"Parties engaged in trade have the right to push their trade by all lawful means, and to endeavor by all lawful means to keep their trade in their own hands and exclude others from participating therein. It is lawful to make profitable offers to attract customers from competitors, and they may induce customers to deal with them exclusively, by giving notice that to such exclusive customers only will they give the benefit of their more favorable terms."

In a celebrated case, Mogul Steamship Company *vs.* McGregor, *et al.*, it was decided that certain ship owners might combine and threaten shippers, that if they patronized the ships of a competing company the combination would refuse to handle their freight. This was held to be the meeting of competition by competition.

In the course of his opinion, Lord Watson said:

"I have never seen any reason to suppose that the parties to the agreement had any other object in view than that of defending their carrying trade during the tea season against the encroachments of the appellants and other competitors and of attracting to themselves custom which might otherwise have been carried off by these competitors. This is an object which is strenuously pursued by merchants, great and small, in every branch of commerce, and it is in the eye of the law

perfectly legitimate. If the respondents' combination had been formed, not with a single view to the extension of their business and the increase of its profits, but with the main and ulterior design of effecting an unlawful object, a very different question would have arisen for the consideration of your lordships. But no such case is presented by the facts disclosed in this appeal. I cannot for a moment suppose that it is the proper function of English courts of law to fix the lowest prices at which traders can sell or hire for the purpose of protecting or extending their business without committing legal wrong which may subject them in damages. Until that becomes the law of the land, it is, in my opinion, idle to suggest that the legality of mercantile competition ought to be gauged by the amount of the consideration for which a competing trader thinks fit to part with his goods or to accept employment. The withdrawal of agency first appeared to me to be a matter attended with difficulty, but, on consideration, I am satisfied that it cannot be regarded as an illegal act. In the first place, it was impossible that any honest man could impartially discharge his duty in finding freights to parties who occupied the hostile position of the appellants and respondents; and, in the second place, the respondents gave the agents the option of continuing to act for one or other of them, in circumstances which placed the appellants at no disadvantage."

Another judge said:

"I cannot see why judges should be considered specially gifted with the prescience of what may hamper or what may increase trade, or of what is to be the test of adequate remuneration. In these days of instant communication with almost all parts of the world, competition is the life of trade, and I am not aware of any stage of competition called 'fair' intermediate between lawful and unlawful. The question of 'fairness' would be relegated to the idiosyncrasies of individual judges. I can see no limit to competition, except that you shall not invade the rights of another."

The Lord Chancellor said:

"There are two senses in which the word 'unlawful' is not uncommonly, though, I think, somewhat inaccurately used. There are some contracts to which the law will not give effect; and, therefore, although the parties may enter into what, but for the element which the law condemns, would be perfect contracts, the law would not allow them to operate as contracts, notwithstanding that, in point of form, the parties have

agreed. Some such contracts may be void on the ground of immorality; some on the ground that they are contrary to public policy; as, for example, in restraint of trade, and contracts so tainted the law will not lend its aid to enforce. It treats them as if they had not been made at all. But the more accurate use of the word 'unlawful,' which would bring the contract within the qualification which I have quoted from the judgment of the Exchequer Chamber, namely, as *contrary to law,* is not applicable to such contracts. It has never been held that a contract in restraint of trade is contrary to law in the sense I have indicated.[1]

The legal status of combinations to competition is summed up as follows:

"The non-recognition of associations by the law has impressed on them a character of great fragility. Whatever may have been the period for which an association was originally formed, no member need belong to it or observe its rules a day longer than he likes. Nothing can keep him to his contract except a sense of honourable obligation, and that does not always resist the temptation of an advantageous order. This fragility is increased by the almost invariable incompleteness of an association which very rarely includes all the competitors in a district. Some are always left outside to profit by cutting prices a shade below the association rates, or it becomes profitable for another district to invade the territory of the combined traders. Disintegrating forces are always at work, and when trade is bad, and there is a mad rush for orders at any price, so as to reduce costs by a large output, they work with double violence until at length a point comes when, by common consent, the association is allowed to lapse until the frenzy has ended in exhaustion. The history of price associations, pools, and similar bodies will show how they 'rose, and stoop'd, and rose again, wild and disorderly.'"[2]

"Repressive legislation could only affect the outward form of combination. Amalgamation cannot be prohibited without forbidding the union of even two firms, while to make monopoly illegal would be fruitless where no formal monopoly exists, and there is no way of determining the greater effectiveness for evil of a merger including eighty per cent. of the trade over one containing only fifty. No law can suppress

[1] See "The Trust Movement in British Industry," by H. W. Macrosty, p. 19.

[2] "The Trust Movement in British Industry," by H. W. Macrosty, pp. 22-23.

the Gentlemen's Agreement, where there are no rules, no constitution, no contract, but common action is effected verbally and informally, and yet some of the most oppressive combinations have been of that form. Neither combination nor agitation should be driven underground, and it is significant that to-day complaints are generally raised in the United Kingdom, not against the legally recognized amalgamations, but against associations which have no existence in the eyes of the law, and work in secret. To strike at the methods adopted by combinations is not easy without at the same time repressing measures blamelessly adopted by the individual trader. Boycotting, dumping, selling at a loss to crush competition, maintaining prices at the highest level which the market permits—these are no monopoly of combinations, but are weapons in everyday use by manufacturers, merchants, and shopkeepers. It would be, indeed, an extraordinary thing to strike at competition in the name of competition." [1]

"The effects of trusts and cartels in England have not been so marked as to provoke popular opposition, and, in consequence, they have aroused little political discussion. In 1908 Sir G. Parker asked in Parliament whether a committee of inquiry was not desirable, and was informed by the Prime Minister that he was aware of the existence of such combinations, and that in some cases their effect might be prejudicial to the public, but that he was not at present prepared to grant an inquiry." [2]

"It is safe to assume that British 'trusts' keep prices on the whole somewhat above what they would be under free competition, but, before attributing this to them as blame, we must be sure that competition prices are healthy prices, an assumption which cannot be made. Close investigation between prices and costs before and after amalgamation would be necessary to determine this question, and, needless to say, the information is not at our disposal. Speaking broadly, there have been very few complaints of price extortion on the part of our great amalgamations, and where made they have generally been supported only by the scantiest of evidence. When the Bradford merchants were at odds with the Bradford Dyers' Association they nevertheless admitted that the price policy of the great combine had been moderate." [3]

[1] "The Trust Movement in British Industry," by H. W. Macrosty, pp. 344-345.

[2] "Monopoly and Competition," by Hermann Levy, p. 315.

[3] "The Trust Movement in British Industry," by H. W. Macrosty, p. 335.

"In 1833 a parliamentary committee inquired into the state of manufacturers, commerce and shipping, and the extensive evidence taken showed that in the manufacturing of finished goods—which alone were, in fact, considered—a vigorous competitive struggle was going on. This had produced in the bad years which preceded 1820 such a lowering of prices that the profits of most undertakings were exceptionally small, and in some cases no longer covered the cost of production. The opinions of the experts heard by the committee were characteristically expressed by a textile worker: 'We have long considered that part of our grievances was caused by the steam looms and by the competition of foreign manufacturers; but we consider that a very trifling matter in comparison with the home competition that exists among our masters, and till there is some remedy for that we shall never be better.' Employers and workers seemed equally convinced of the oppressive results of competition; but there is no trace throughout the evidence of any united action to restrict or abolish it. Rather, in all branches of industry, competition was regarded as an evil, as inevitable as it was harmful, and the survivors regarded it as little more than a natural consequence of the struggle for existence that the weaker gradually became entirely submerged. Adam Smith had taken the ruin of such men as a completely natural fact, unimportant compared with all the advantages of the competition he championed. He had in mind the condition of affairs which an expert stated in 1833 to be prevalent in England, when he said: 'I should ascribe to increased competition the misfortunes of many people in England. If too many people run into one line of business, of course the weaker portion must give way.'" [1]

[1] "Monopoly and Competition," by Hermann Levy, pp. 103-104.

APPENDIX III

CONDITIONS IN GERMANY

Trade combinations in Germany are not organized under special, but are formed and operated under general laws. It is the policy of the Government to encourage syndicates and what are known as "cartels," which are neither more nor less than hard and fast agreements to restrict outputs and maintain prices.

The Prussian State is a member of the potash syndicate, because it is a large miner of potash, and the draft of the potash law originally provided that all the German potash mines should be compelled to join the syndicate, but that compulsory feature was not embodied in the imperial act as finally passed.[1]

The several trade syndicates may be defined as follows:

"The Selling Agreement" cartel, or combination under which producers agree not to sell their products below a specified minimum price, which price is changed from time to time in accordance with the varying cost of production and general requirements of market.

"These rather loosely organized combinations were the original type of German trade syndicates, and served their purpose very well in prosperous times, but in periods of depression and diminished demand it was found difficult to hold certain members to the agreement, and it was decided to adopt a more binding form of organization, and put the business of selling under direct control of a central authority."

[1] See "Legal Status of Trusts in Germany," Consular Trade Reports, January 25, 1911, pp. 305-312.

A German authority says: "Kartell and Trust are very different, not in degree, but in their nature. I know of no case in the thirty years of active kartell movement in Europe in which the one form has passed over into the other."

Sales Syndicates, in which all members to the "cartel" pool their products, to be sold through a central committee which fixes the selling price and apportions among the members orders as they are received in proportion to the capacity of each.

"In a syndicate of this class the individual firms and companies which it includes retain their corporate autonomy, pay dividends on their own stock according to earnings, and unless otherwise agreed in the cartel, purchase independently the raw materials of manufacture."

A third class includes the *trusts,* or closely organized syndicates, which purchase original corporations and issue new stock, consolidating the management under the control of the central organization.[1]

"The majority of German business men and economists are not opposed to such syndicates and the creation of monopolies, in which the State itself sometimes participates in combination with private producers, is lawful if the creators commit no injurious act, a limitation so difficult to define and comprehend that practically the only difficulties with which the ordinary cartels come into contact are difficulties arising between the members themselves. The courts have frequently recognized the perfect right of producers to control their product in a monopolistic organization as a right somewhat akin to the right to make use of a highway, and only subject to correction of abuses of power.

"The profound difference between the German and the American conception of sound business conditions is best explained, perhaps, by the racial difference between the two peoples—the German, with strong collectivist tendencies which manifest themselves in society, in government, and in trade, and the American, with a deeply rooted individualism, which remains even when he engages in a collectivist enterprise. Thus it happens that the capitalistic classes of Germany, although opposing socialism in their public life, nevertheless drift in the direction indicated by their natural tendencies in their business life, and, in so doing, they have the tacit approval of the avowed socialistic classes, who perceive in the steady accumulation of the producing powers in a few hands a movement tending logically and inevitably toward the

[1] See *Daily Consular and Trade Reports,* January 25, 1911, p. 306.

eventual realization of their dogma—that is, the State in supreme control." [1]

"The German courts have repeatedly ruled, according to Richard Calwer, the socialistic writer, in his 'Kartelle und Trusts,' that the syndicates do not violate the principles of trade liberty, as they tend to protect the interests of the whole nation against the selfishness of individuals, and to protect the products of industry from the many disadvantages which arise from price cutting.

"Under these rulings, absolute or partial monopolization by many cartels has been brought about, the national output being reduced, with a consequent lifting of prices to a remunerative level. The danger point would be reached, from the point of view of the law, should a cartel of this character, on the possible refusal of one outside producer to accept its terms, undertake by unfair means to drive him into its fold or crush him if he refused its terms, and the difficulty of the prosecution would be to prove that any such result had been contemplated, even though its effect had been attained.

"The very forms of commercial organization most common in Germany and America correspond to the temperamental qualities of the two peoples. In Germany the commercial trust, or cartel, is usually a federation in which each member retains its commercial identity while abandoning its freedom of action to the federation for a contractual period of three or five or ten years, or perhaps longer, but expecting eventually to get it back, and then, perhaps, make another contract, if the results of the first have been satisfactory. A German cartel is, as a rule, open to all those who submit to its provisions, and the control of the members is confined to the limits traced in the federal pact. In the typical American trust, instead of this association of units with influence usually rated according to productive capacity, we observe generally the permanent ownership of a large part of the enterprise by a small group of persons, in which there is ordinarily some dominating personal element.

"The basic notion of the German organizer has been to control production definitely, leaving it to the resourcefulness of the individual producers in the cartel to make more or less profit out of the proportion of the production allotted to them; the basic notion of the American organizer has been, usually, to create a perfected and consolidated instrument, success following naturally as a result of its well-balanced and skill-

[1] "Legal Operation of Trusts in Germany," *Daily Consular and Trade Reports,* September 15, 1911, pp. 1217-1218.

fully organized proportions. German cartel organization has contemplated that all its constituent firms should remain in business; American commercial centralization usually has meant that the weaker, or for any reason undesirable, elements should go out of business, suggesting that the strong native individualism of our people rises to the surface, even when an effort tending toward pure collectivism is attempted." [1]

A high German Court, after reviewing authorities in France, Russia, and the United States, made the following comments:

"If, in any branch of the business, the prices so decline that a profitable trade is made impossible thereby, or that the trade is seriously endangered, the crisis at the start is not only injurious to the individual person, but also from a national economic point of view, and it lies, therefore, in the interest of the whole that the inadequately low prices in a certain branch of business should not permanently exist. Therefore, formerly, and at the present time, legislators have aimed to increase prices of certain products by inaugurating protective tariffs.

"It cannot, therefore, be looked upon as generally contrary to the interests of the whole, if manufacturers of a certain article form a cartel in order to prevent or to modify the mutual underbidding and the decline of prices for their products caused thereby; on the contrary, if the prices are continually so low that the manufacturers are threatened with financial ruin, their forming a cartel is not only to be looked upon as a justified manifestation of self-preservation, but also as an act which lies in the interest of the whole.

"The formation of the syndicates and cartels in question, therefore, has been designated in various quarters as a means which, if reasonably applied to national economics, is especially adapted to prevent uneconomic overproduction, yielding no profit and resulting in catastrophes." [2]

"The Imperial German Government issued statistics in 1905, showing that there were 385 cartels existing at that time in Germany, but these figures are said not to contain the Konditionskartelle (those, *e. g.*, fixing terms of sale other than prices) and numerous other confederations, the existence of which was not then within the knowledge of the authorities.

[1] "Legal Operation of Trusts in Germany," *Daily Consular and Trade Reports*, September 15, 1911, pp. 1218-1219.

[2] *Daily Consular and Trade Reports*, September 15, 1911, p. 1219.

When these statistics were made up, it was understood that about 12,000 establishments were members of syndicates. The following recapitulation shows the variety of industries covered by commercial combinations in 1905:

Coal mining	19	Textiles	31
Stones and earth.....	27	Paper industry	6
Brick industry	132	Leather trade	6
Earthenware industry .	4	Wood industry	15
Glass industry	10	Food products	7
Iron industry	62	Miscellaneous	7
Metal trade	11		
Machinery, electricity..	2	Total.....385" [1]	
Chemical industries ...	46		

Germany has a statute [2] prohibiting unfair competition. It provides that whoever is guilty in industrial deals of transactions which offend against good morals, may be held liable in damages. The courts have so interpreted the law that it not only covers unfair actions, but if a party refrains from doing something he ought to do, he is liable.

The German Courts go much further than the courts of this country in carefully weighing transactions to determine whether or not they are contrary to good morals and fair play, and in enforcing the laws against practices and actions which are not looked upon as decent and reputable. Individuals are protected against oppression by parties who are greedy for gain. Damages are awarded where things are done to influence a man's business prospects or his connections with his customers. If a man, in the exercise of a technical legal right, damages a third person, he may find himself liable under the very broad statute. Prevailing standards of good morals and commercial ethics are taken into consideration. In mercantile affairs the views of customers and of honorable merchants in their commercial intercourse are used to measure the guilt or innocence of specific acts.

A member of a combination wrote a certain customer that unless such customer refrained from making purchases from

[1] *Daily Consular and Trade Reports*, September 15, 1911, p. 1222.

[2] A translation of this statute is on file at Washington in the Bureau of Manufactures.

firms outside of the combination, the combination would refuse to sell him goods. An outsider caused the arrest of the member, and he was convicted. The court held the combination legal, but it also held that in threatening a customer unless he ceased dealing with parties outside the combination, the threat amounted to oppression. The spirit of this decision is directly opposed to that of the Mogul Steamship case, referred to on page 349.

"The German Civil Code, paragraph 138, says that a transaction which offends against good morals is void. The forming of a cartel, or syndicate, is not held to come under this paragraph, but, when formed, it may bring itself under the operation of this provision by the means which it may choose to attain its purposes, such as, for instance, boycotting, the cutting of prices with competitors to such an extent as to bring about the financial ruin of the latter, misuse of their monopoly and franchises, and the like. Concerning boycotting, there are decisions of the Imperial Supreme Court in the years 1903 and 1906 on this point.

"The German Civil Code contains certain paragraphs touching 'treu und glauben,' or truth and good faith, and perhaps these paragraphs may be designated as containing equitable principles in contradistinction to the more fixed legal rules, there being in Germany no system of equity law and no equity courts. The Supreme Court at Leipzig decided in the year 1904 that a stricter moral standard must be applied to cartels and syndicates; that is, that they must be held to a stricter accounting for the moral quality of their acts, because of the preponderance of economic interest which they represent." [1]

This is in line with advanced thought, and in accord with the principles of the New Competition.

[1] *Daily Consular and Trade Reports,* January 25, 1911, p. 310.

INDEX

Accounting, uniform system of, recommended, 340.

Æsthetic efforts, 43.

Aggregation of labor discussed, 284.

Alexander, 42.

Almond Growers' Exchange, 317.

Altruism and generosity founded on coöperation, 29.

Amalgamated Association of I. & S. workers opposed to shorter hours, 158 note.

American Society of Equity, 36 note.

American Sugar Refining Co., 46.

American Federation of Labor, 309.

Anarchism and certain trade maxims, 201.

Anarchist in trade, 116.

Annihilation, competition and struggle for, 20.

ANTI-TRUST LAWS, *see* TRUSTS; amendments to, proposed, 36; contrary to spirit of age, 47; drawn along the lines of least resistance, 338; not enforced against certain classes, 315; theory of, 194.

ASSOCIATION, *see* OPEN PRICE ASSOCIATION.

ASSOCIATIONS, certain meetings of, not illegal, 119; indirect agreements of, 119; meetings of, for luncheon, 118; of railroad employes and shippers suggested, 302; under proposed Federal Law, 342.

Balance of trade, 42.

Baldwin, Prof. James Mark, 20.

Bargain days, 57.

Beauty not a wholesale proposition, 43.

Beyer, David S., 154 note.

BIDS, calling for, with no intention to let to lowest, 185; false representations concerning, 188; method of government purchases and contracts on, criticized, 217.

Biological competition, 11, 21.

Black list, use of, 56, 341.

Bricklayers and Masons' International, 309.

Broom-corn combination, 37 note.

BRUTAL BUYING, *see* BUYING; government purchases and, 217.

BRUTAL COMPETITION, *see* COMPETITION, BRUTAL.

Burley Tobacco Society, 37 note.
Burton, Senator Theodore E., 63 note.
BUSINESS, a lottery, 192; reducing the speculative elements of, 203.
BUYERS, all men both buyers and sellers, 52; secret price policy and, 107; sellers and, most men both, 33; two classes of, 204; who have fixed incomes, 37.
BUYING, BRUTAL, 179.

Cæsar, 42.
California and oriental labor, 5.
Calwer, Richard, 356.
Canada, conditions in, 345.
Capital and labor, conflict between, 4; misuse of term capital, 322.
Capitalists, combinations of, and politicians and judges, 9.
Carnegie, Andrew, 157.
Carnegie Company, 99.
Carpenters, association of, 100.
Cartels in Germany, 354.
Census statistics inadequate, 156.
City of London case, 7.
Clark, Prof. John B., The Control of Trusts, 14.
Class discrimination by indirect methods, 315.
CLASS LEGISLATION and fair play, 314; no distinction between combination of farmers and labor and combinations of manufacturers and employers, 320; unconstitutional, 314 note 1.
Coal strikes, results of, 291 note.
Collier, Wm. M., 50 note.
Collusion, effect of, 93.
Collusive competition, *see* COMPETITION COLLUSIVE.
Colorado Fruit Growers' Association, 317.
Combination, line of normal, in industries, 265.
COMBINATIONS, *see* also TRUSTS; and pools in England and Germany, 122; and unfair competition, 63; conflict between, 54; forms of, 45; fruit growers', 54; great era of, 34; here to stay, 10; inevitable, 35; large and friendless, 63; marketing organizations, 54; of employers, 53; of labor and farmers, 53; of railways, 53; of sellers, 53; old line and open price associations, 142; on a selfish basis, 54; question of mere size, 335; to advance prices, effect of, 146; which include customers, 57.
Commerce, international dumping of goods, 250 note 1.
Commonwealth vs. Strauss, 76 note.
COMMUNITY, all losses unproductive enterprises borne by, 241; and wasteful competition, 1; attitude of, toward industries and men who are waiting for a normal demand, 251; economic organ-

ization of, wasteful, 245; indifference of, towards failures, 254; must prevent strikes, 290; should control certain so-called economic laws, 238.

COMPETITION, a fetish, 2, 22; a relentless force, 11; and barbaric conditions, 10; and its professed friends, 79; and labor unions, 8; and politicians, 5; and secret prices and rebates, 96; and struggle for annihilation, 20; as affected by trusts, 51; attitude of labor unions towards, 2; attitude of the public towards, 16; attitude of socialists towards, 3; benefits of, 27; between retail merchants, 86; between towns, 38; biological, 11; blind, vicious, unreasoning, 2; blind worship of, 26; cause of distress, 7; collusive, 92; competitive or coöperative basis of, 35; contracts to prevent unhealthy, 6; cut rate drug stores and, 31; cutthroat, 31; death of trade, 1; definitions of, 19; destructive, 29; disappearance of small competitor in, 64; disintegrating force, 26; essence of the old, 72; excessive, 6; extensive, 40; in products of the soil, suppressed, 9; in the labor world, 84; in Tin Plate industry, 197; independent, against an integrated industry, 268; intensive, 40; is inhuman, 11; is war and war is hell, 23; leads to combinations, 44; life of trade, 1; line of normal, in industries, 265; lumber companies and, 65; mail order houses and, 31; moral and economic rights of, 65; mother of trusts, 50, 99; nature's, 15; new, court decree bearing upon, 68; new, interest of third party and, 72; new, versus old, 62; not the life of trade, 7; of isolation, 5; old fashioned, 271; piratic, merciless, cutthroat, 5; production of quantity and, 44; real and beneficial, 81; reckless and ignorant, 89; rivals in a race, 80; suppressed, 90, 104; suppressed, and fixed prices, 111; suppressed, gentlemen's agreements and, 96; survival of the fittest and, 13; synonymous with struggle, contest, rivalry, 21; wasteful, and the community, 1; what is, 12; when buyers would prefer to have prices fixed, 94; will the fittest survive? 32.

COMPETITION BRUTAL, 59; and Congress, 61; and size of a trust, 79; and vicious, 60; and the courts, 79; between blacksmiths, 61; instances of, 64; is natural and instinctive, 61; progress toward higher ideals, 62; time honored practice, 59; to small competitor, 60.

COMPETITION FALSE, 80, 81, 90, 92; and secret prices, 111; basis of, secrecy, 100; between blacksmiths, 85; between carpenters, 82; between crane builders, 87; bidding in the dark and, 88; in the contracting and manufacturing world, 84; oriental method of, 106; shoddy and adulteration logical results of, 205; wide differences in bids in, 88.

COMPETITION, TRUE, *see* OPEN PRICE ASSOCIATIONS; and open prices, 111; as compared with old, in theory, 216; conditions of, 82; eliminates secrecy, 86; factors of, 89; helps the small producer, 109; knowledge, 89; prices more nearly alike in, 89; results of, 109.

COMPETITION, UNFAIR, 32, 59; and monopolies, 78; between country dealers, 60; between jobbers and manufacturers, 60; between peddlers, 60; by integrated industries, 269; business methods in, must be suppressed, 339; decree against, 68; false statements and disbursements and, 56; favored customers in, 97; goods "just as good" in, 67; law in Germany against, 358; mail order and department stores and, 60; Massachusetts law against, 75; misrepresentations in, 97; practices of the individual in, must be suppressed, 337; secret prices and, 97; under-selling rivals and, 73.

Conflicts worldwide, 41.

Congress and brutal competition, 61; and corporations, 79.

Consolidations, 52.

Constitutional law, Massachusetts, against unfair competition, 75.

Constitutionality of all class legislation, 310 note.

Consumer interested in coöperation, 54.

Consumer, the ultimate, 204.

Constructive legislation, 333, 336.

Contest and competition, 21.

Contractors generally, unfair practices by, 184.

CONTRACTS, constitutional right to make, 76; illustrating brutal buying, 181; in restraint of trade, 33; standard forms a provision, 190.

COÖPERATION and buyers and sellers, 53; and integration of labor, 283; and over capacity, 250; and state supervision, 79; basis of altruism, 29; basis of our national existence, 24; cannot be prohibited, 120; constructive, 29; danger is towards larger and larger, 331; era of, 5; forms of, 45; foundation of progress, 18; foundation of society, 24; growth of, 38; is progress, 11, 24; is trade, 10;

means a broader outlook, 146; midway between selfish individualism and socialism, 153; more of, needed, 98; of labor, farmers and manufacturers here to stay, 319; production and prices and, 49; promoted by true competition, 30; railway associations and, 53; rise and fall of, in history, 25; sellers' organizations and, 53; societies for, urged by President Taft, Colonel Roosevelt, 37 note; suppressed by anti-trust laws, 28; to reduce prices, 52; to reduce speculative elements of business, 203; to take in consumer, 54.

CORPORATIONS, *see* also TRUSTS; and brutal competition, 61; laws limiting size of, 48.

COST, a scientific system, 148; crime to sell below, 256; false statements regarding, 341; no man should sell goods below, 192; of living, 67; price should never fall below, 254; relation of, to a fair price, 232; rise and fall of price with relation to, 245; rules should be established for scientific ascertainment of, 253; selling at or below, punishable, 341; selling goods below, 57; the element of labor and, 152; Texas law against selling below, 74; uniform system of, recommended, 340.

Cote vs. Murphy, 330.

Cotton growers' organizations, 318.

Cotton growers restrain competition, 9.

Coulter, J. L., 316.

COURTS, and brutal competition, 79; attitude of English, towards combinations, 349; attitude of German, towards unfair competition, 358; attitude of German, towards trusts, 356; being terrorized, 309; class legislation unconstitutional, 310 note, 314 note; have already approved combinations of labor, fixed wages, 326; opinions of, referring to competition, 6; Sugar Refining Co. case and, 6.

Crane builders, competition between, 87.

Curran vs. Galen, 327.

Customers, relations with, 147.

Declaration of independence, 200.

Demagogues, 47.

DEMAND AND SUPPLY analyzed, 247; shifting from object to object, or from all objects to money, 248.

Department stores, 60, 66.

Disintegration and integration, 30, 260.

Distances, annihilation of, 39.

Dollar diplomacy, 42.

Drug stores, cut rate, 31.

Dumping of goods, 250 note 1.

ECONOMIC LAWS, control of,

194; under control of community, 238.
Economic progress, this country backward in, 173.
Economic rights discussed, 276.
Economists of old school and competition, 22.
Electric lamps, decree concerning, 68.
Ely, Prof. R. T., 39 note, 48 note.
EMPLOYERS AND EMPLOYES, competition between, 30; the two great classes, 323.
EMPLOYERS, combinations of, here to stay, 10; debt of, to employes, 161; deny interest of labor in industry, 282; fight against labor, 152; organizations, 53; relations of, with employes, 147, 151; right of, to combine as against labor unions, 330 note; welded together by attitude of labor, 123.
EMPLOYERS' LIABILITY, 162; a question for actuaries, 168; changes in law of, 167; the economic view, 167; the law in New York, 164.
EMPLOYES and provision for injury and pension, 153; as members of employers' associations, 57; economy to provide for welfare of, 154; sex, age, and nationalities of, 153; wages and hours of labor of, 153.
Encyclopædia Britannica, definition of competition in, 19.
Engineers' attitude toward reduction of hours of labor, 158.
Engineers' threatened strike, 288.
England, conditions in, 350; Parliamentary inquiry of 1833 in, 353.
Ethical significance, open price policy, 117.
Ethical standards, 17.
ETHICS, competition contrary to, 13; fair trade and higher business standards and, 341; sacrificed at the basis of progress, 14; tendency of, towards higher standards in trade, 337.
EVOLUTION and social relations, 14; of competition, 11; rights of the strong against the weak and, 15; struggle for existence and, 61; survival of the rich and powerful and, 16; the human law survival of all, 16; will the fittest survive? 32.
Exchange builders, 102.
Exchange, industrial, 101.

Factory system, 43.
Failures, liabilities, 255.
Family a coöperative unit, 24.
FARMERS are partly free to combine, 328; as capitalists, 323; as employers of labor, 324; associations of, in grain growing states, 317; coöperative creamery, 317; coöperative societies of, 33, 36, 51, 316; organization of, in Illinois, 37 note.

Firemen and engineers, brotherhoods of, 309.
Fires, losses by, 254.
Fitch, John A., 154 note, 158 note, 157 note.
Florida Fruit Producers' Association, 318.
Fraud, false representations concerning bids and prices, 188.
Freedom, rise of, the development of law, 334.
Fruit and grocery associations, 54.
Fruit Growers' Associations in various Western states, 317.
Fruit Exchange in California, 317.

General contractors, unfair practices by, 184.
General Electric Company, U. S. vs., 68.
Gentlemen's agreements, 96.
Georgia Peach Growers' Association, 318.
GERMANY, combination of steel manufacturers in, 122 note; conditions in, 354; law prohibiting unfair competition in, 358; number of syndicates in, 358; socialistic conditions in, 170 note.
Gilds, Medieval, 40, 104.
GOVERNMENT and competition, 27, 208 note; duty of, to see that prices are maintained, 207; it should be the object of some department of, to help manufacturers and dealers, 332; maintains railroad rates, 207; method of purchasing supplies and letting contracts by, criticized, 217; work for, bidding on, 187.
Governors and cotton growers, 9.

Hadley, President, 18-20, 27, 235 note.
History, the story of the rise and fall of coöperation, 25.
Hoffman, F. L., 168 note.
Holmes, Justice, opinion by, 6.
Hospitals, 154.
Huxley on evolution and social progress, 13.

Ideals, progress towards, 62.
Ignorant competition, *see* COMPETITION.
Illinois, class legislation in, 310.
Incorporation, federal, 277.
Individual power to run his business will be curtailed, 210.
Industrial Commission and Federal, 204.
Industrial Commission suggested, 339.
Industrial workers of the world, 309.
INDUSTRIES, different, which pay different wages and profits according to earnings, 300; integrated, in competition with independents, 268; liability of, to all employed, 162; over-capacity of, is normal, 244.

Industries, vanishing, 221.
Industrial peace versus industrial war, 104.
INTEGRATION, 30, 279; in steel industry, 263; of labor would not do away with national organizations, 301.
Intensive and extensive competition, 40.
International Harvester Company case, 328, 333 note.
INTERSTATE COMMERCE LAW, 27, 204; forces railroads into traffic associations, 161.
Interstate industries, parties and corporations engaged in, 340.
Inventions not due to competition, 28.
Iowa, law against unfair competition in, 76.

Kansas class legislation, 313.
Kellogg vs. Larkin, 7.
KENTUCKY, farmers of, organizing, 36 note; tobacco associations in, 319; vegetable associations in, 319.
Knights of Labor, 309.
Knowledge, and stability of prices, 121; the basis of true competition, 89.

LABOR, aggregation of, 283; and capital, conflict between, 4; and the farmer, 324; and the industry it works for, 162; conditions of, and associations of employers and employes, 160; conditions of, twelve hour shifts, 157; division of, is coöperation, 25; in connection with peak loads, .244; is free, 328; integration of, a natural development, 286; interest of, in an industry, 279; opposition of employers to advancement of, 152; problem of, integration versus aggregation, 279; provisions for injury, disability or death, 161; scheme of integration of, 283; shorter hours opposed by certain associations of, 158; the eight hour day and, 159; troubles in, underlying propositions, 303.
LABOR UNIONS, 51, 53; and competition, 8, 84; and medieval gilds, 40; and socialism, 3; approved by courts, 326; as aggregates, 285; attitude of, regarding interest of employes in industries, 282; attitude of, towards competition, 2; compel employers to combine, 123; dictate wages, 33; shrewd programme of, in presenting demands, 290; strength of, 309; wages and, 281.
La Follette, Senator, 59-60-61-63, 79.
LAW, a conservative force, 334; a federal, industrial, like Interstate Commerce Law, 204; as a rule of conduct, 157; has little meaning to most men, 333; passed to curb progress, 335; splitting

hairs with, 119; to regulate instead of destroy, 337.
LAWS, anti-trust, and socialism, 4; confusion of 75; demand for constructive, 260, 336; destructive, fallen into disrepute, 336; encourage brutal competition, 15; favoring labor and farmers' combinations, but denouncing manufacturers, 310; new, suggested, 339; of Canada regarding trusts and combinations, 345; of England regarding trusts, 350; theory of anti-trust, 28.
Legislation, constructive, 333.
Levy, Hermann, 352-353.
Lockout must go, 303.
Lottery, business as a game of chance, 192.
Louisiana, rice growers' associations in, 319; class legislation in, 312.
LUMBER COMPANY, convicted of unfair competition, 77; unfair practices of, 65.
Lumber industry integrated, 273.
Lying, ancient practice of, 57.

Macrosty, H. W., 262 note, 351.
Mail order houses, 39, 60, 66; and competition, 31.
MANUFACTURERS and dealers are not free to combine, 328; caught between farmers' organizations and labor unions, 34; timid, 331.
Marketing organizations, 54.
Market price, no tangible existence, 239.
Massachusetts law against unfair competition, 75.
Master and servant notion, 57.
McVey, F. L., 196 note.
Men no longer wish to fight, 10.
Methods of business changing, 10.
MICHIGAN, class legislation in, 313; Grape Growers' Association in, 316; Tamarack Association in, 325.
Middleman, 55, 64.
Miles Medical Co. Case, 6.
Mill, John Stuart, 20.
MINNESOTA, class legislation in, 313; Farmers' Elevator Company in, 319; law against unfair competition in, 76.
Missouri law limiting size of corporations, 48.
Mogul Steamship Company case, 350.
MONOPOLIES, artificial, 28; and unfair competition, 78; a few real exist, 29 note; when trusts are, 48.
Montana, class legislation in, 311.

Napoleon, 42.
Nature is merciless, 15.
Nebraska, class legislation in, 311; law against unfair competition in, 76.
New competition, *see* Competition new.
North Carolina, class legislation in, 313.

Ohio, class legislation in, 313.
OPEN PRICE ASSOCIATION, 100, 117; advances the interests of the public, 216; and labor, 105, 155, 161; better prices not certain under, 141; blanks used, 139; brutal buying, 179; Committee on Relations with Employes and, 153; complaints, 135; control of manner of bidding and, 187; control of prices and, 216; danger ahead of, 104; deals with actual transactions, 121; definite economic method, 117; demands concerted action, 115; discussion of business, 134; distribution of information, 129; effect of, on competition, 98; ethical significance of, 117; experiment worth trying, 102; filing of contracts is the final step, 134; formed for not less than one year, 141; form of organization of, 127; frankness and truthfulness, 150; industrial exchanges, 101; legal, 120, 331; means a higher individualism, 153; means stable prices, 115; means that sellers and buyers coöperate to control fluctuation, 207; method of operation, 127; notification of revision of bids, 131; not like old line pools, 122; open bidding, 130; order of business, 142; parties interested, 103; pension and workmen's compensation, 177; promotes fair, uniform, and stable prices, 207; promotes harmony between employer and employe, 152; publicity, 143; record of proceedings of, 144; relations among members of, 147; relations of, with competing plants, 149; relations of, with employers and employes, 151; relations of, with customers, 179; relations of, with sellers, 192; relations of, to the public, 147, 214; results of, 109, 145; retail trade and, 105; revision of bids not fair to customer, 132; secret advantages and, 136; small manufacturer and, 108; some of the difficulties in organizing, 137; steps to establish, 123; suppression of unfair practices by, 207; the big fellow and the little fellow, 150; unfair competition and, 150; vanishing industries, 230.
One price policy, 57, 108.
OPEN PRICE POLICY, advantages of, 141; in America and Europe, 106; false statements regarding bids and, 189.
Oriental customs prevail with manufacturers and contractors, 106, 107.
Over-capacity normal, 244.

PANICS and coöperation, 250; cost of, 248; money propositions, 249.
Partnerships, 45.

Patents, utilization of, to control trade, 70.
PEAK LOAD and its demand upon merchants and manufacturers, 243; and the question of idle labor, 244; in relation to price and capacity, 241.
Pennsylvania, class legislation in, 312.
Pennsylvania railroad, 176.
PENSIONS, 153, 161, 172; paid by certain corporations, 174; government protection of funds, 177; paid by state in industries a socialistic proposition, 176; to soldiers and sailors, 174.
People vs. Sugar Refining Co., 6.
Perfection, rivalry incentive towards, 18.
Philosophy of trade, 192.
Playgrounds, 154.
Political economy, approval of brutal maxims of, 273; dismal science, 193.
POLITICIANS and combinations of capitalists, 10; and combinations of labor, 9; and competition, 5; suppression of competition in products of soil favored by, 9.
Pools, *see* Combinations.
Post, parcel, 39.
PRICE, *see* Open price policy; arbitrary adjustment of, to cost, 252; and coöperation, 49; and cost discussed by Adam Smith, 232; as affected by integrated industries, 268; as affected by open price associations, 101, 130, 140; buying below cost, 219; consumer and a stable, 205; development of large establishments, 116; discrimination in, between parties and localities condemned, 341; distinction between fair and right, 252; fair, uniform, and stable, essential, 202; false statements regarding, 341; federal regulation of, chimerical, 277; fixed, 114; fixed by farmers' societies, 51; fixed, may be very desirable, 202; ignoring the man who pays, 57; implied agreements to control, 120; impossible to keep men to a fixed, 133; inspection of, by government agents, 219; knowledge regarding, keeps prices stable, 121; marking in cipher, 107, 112; matter of social concern, 206; meetings to compare, 119; on stock exchange, 115; open, as a labor saving device, 112; oriental method, 106; peak load and, 241; rise and fall of, with relation to cost, 245; scientific proposition, 253; secret, is cumbersome, 112; secret, is wasteful, 116; should never fall below cost, 254; should vary with cost, 246; stable, as compared with stable wages, 217; storms like wind storms, 114; suppressed, 114; and trusts, 51; unions

to advance, 52; what is a fair, 232; what is a fixed, 111; what is an open, 110; where stable, 115.
Production and coöperation, 49.
Profit an individual matter, price of social concern, 206.
PROGRESS and large producers, 62; and morality, 17; is co-operation, 11, 18; in last fifteen years, 62; signs of change, 68.
Protection as opposed to certain trade maxims, 198.
PUBLIC and strikes, 291; attitude of, towards competition, 16; bears all costs of operating railroads, 291; distrusts secrecy, 214; interested in demands for increased wages by railroad employes, 297; profits to, from disaster to individuals, 72; relations of, to open price associations, 214; suffers from secret methods, 96.
PUBLICITY, a remedy, 339; cardinal principal of the new competition, 143.

Railroad Conductors' Order, 309.
RAILROADS, employes of, demands by, parties interested, 292; employes of, scheme of integration, 283; employes of, suggested programme on presentation of demands, 293; firemen of, demands by, 291 note; questions of, in rate controversies, 208; Sherman Law and, 161; strike pending, 288; under Interstate Commerce Law, 204; vicious conditions in, under old competition, 210; workings of traffic associations, 210 note.
Railway associations, 53.
Rebates and secret prices eliminated by open price policy, 145.
Remedies proposed, 277.
Restraint of competition reasonable, 6.
RETAIL stores, 48 note.
RETAIL TRADE, associations and customers, 57; association including employes, 57; mail order and department stores, 66; one price policy, 86, 105; unfair competition and, 55.
RIGHTS, dependent upon relations, 200; discussed in connection with so-called right to strike, 303; of a man to do as he pleases with his own, 274; supposed, to sell below cost, 275; what sellers should not do, 206.
Ripley, W. Z., 196 note.
RIVALRY and competition, 21; in brute competition, 18; true, 18.
Roosevelt urges formation co-operative societies, 37 note.

Safety appliances, 153, 157.
Sahlin, Axel, 262 note.
Sales, false statements regarding, 341.
Sanitary conditions, 153.
Saw mills, combination of, 266.

Scheme of steel industry, 261.
Science of trade not yet written, 192.
Seager, H. R., 168 note.
SECRECY, basis of false competition, 100; eliminated in true competition, 82; yielding to publicity, 10.
Segregation, what it means, 260.
Sellers and buyers, *see* Buyers and sellers.
SHERMAN ACT, 34, 73, 75; aimed at size, 335; a coöperation of farmers and laborers, 320; destructive in purpose, 36, 260, 333; does it apply to existing conditions, 326; exemption labor unions and, 314; repeal of, opposed, 336; not enforced against certain classes, 34, 316; obsolete and mischievous, 337; railroads and, 161, 204; railroad associations and, 213 note; results of enforcing, against large corporations, 255; standard forms of contracts and, 190; strikes by railroad unions and, 289.
Signs of change, 68.
Smith, Adam, discussion of price and cost, 232.
Smuggling, 46.
Social progress and evolution, 13.
Social relations in advance of biological evolution, 14.
SOCIALISM and anti-trust laws, 4; and competition, 3; growth of, 3; labor unionism and, 3.
Society, foundation of, is coöperation, 24.
South Dakota, class legislation in, 311; law against unfair competition in, 77.
Spencer, Herbert, 46 note.
Squier, L. W., 168 note.
Standard Oil Company, 28, 59, 60, 63, 99, 119, 176, 258.
State vs. Brayton, 77.
State vs. Central Lumber Company, 77.
Statistics, mortality, in U. S., 168 note.
STEEL INDUSTRY, interdependence of several units of, 262; line of normal competition, 265; scheme of, 261.
Steel manufacturers, combination of, in Germany, 122 note.
STRIKES, attitude of government toward, 288; contrary to social progress, 290; must go, 303; strike breakers and, 31.
Struggle and competition, 21.
SUPPLY AND DEMAND as described by Adam Smith, 233; theory of, criticised, 237; wide fluctuations in, under old competition, 240.
Suppressed competition illegal, 90.
Syndicates, number of, in Germany, 358.

Taft, President, on right of labor to strike, 327; urges formation coöperative societies, 37 note.

Tamarack Association of Michigan, 325.
Tariff and Tin Plate Industry, 196; as opposed to certain trade maxims, 198.
TENNESSEE class legislation in, 313; tobacco associations of, 319; vegetable associations of, 319.
TEXAS, law against selling below cost or giving away in, 74; Rice Growers' Association in, 319; Truck Growers' Association in, 319, 325.
Thomas vs. C. N. O. & T. P. Ry., 327.
Times are changing, 10.
TIN PLATE Industry, attitude of government toward, 198; and the tariff, 196.
Tobacco company, 119, 258.
Tobacco growers' associations, 319.
Tobacco Society, 37 note.
Trade anarchist, 116.
TRADE, maxims of, 193; maxims of, certain anarchistic, 201; philosophy of, 193; science of, not yet written, 192; tricks of, 58, 67; vicious conditions in, under old competition, 210.
Traffic associations, workings of, 210 note.
TRUE COMPETITION, *see* COMPETITION, TRUE.
TRUSTS, *see* also CORPORATIONS, combinations and, in Germany, 354; condemned, even though they have benefited the community, 328; disintegration and, 258; have their birth in competition, 99; hypocrisy of those who assail, 47; laws against, 34; logical development, 45; prices and, 51; problem of, 257; the result of competition, 45, 50 note; rights of, as against small competitors, 14; segregation versus disintegration, 257; shortcomings of, 46; socialism and anti-trust laws, 4; what to do with, 257.
Turmoil and upheaval, 62.
Truth as a labor saving device, 112.

UNFAIR BUYING, *see* BRUTAL BUYING.
UNFAIR COMPETITION, *see* COMPETITION UNFAIR; laws of Iowa, Minnesota, Nebraska, and South Dakota against, 77; practices of, enumerated and condemned, 341.
United Shoe Machinery Company, Canadian investigation of, 348.
United States and economic progress, 173.
U. S. Steel Corporation, 29, 63, 99; integrated industry, 264; safety appliances and, 154 note; Tin Plate Industry and, 197.
U. S. vs. General Electric Company, 68.
U. S. versus Joint Traffic Association, 213 note.

U. S. versus Trans-Missouri Freight Association, 213 note.

VANISHING INDUSTRIES, 221; attitude of biologist towards, 229; illustrations of, 223; neglect of, by government, 228; open price associations and, 230; suggestions how to help, 225.

Virginia Apple Growers' Association, 318.

Virginia Farmers' Association, 318.

Wages, fixing, 51; fixed by unions, 281.

Walnut Growers' Association, 317.

Walsh, C. M., 236 note.

War is competition, 23.

Wealth, our reckless prodigality, 334.

Whitwell vs. Continental Tobacco Co., 76 note.

Wisconsin class legislation, 313.

Woman and child labor, 32.

WORKMEN'S COMPENSATION, a new principal, 169; and pensions, laws of different countries, 168.

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